MEDICAL CARE FOR ARMED SERVICES PERSONNEL, ETC.

HEARING 80 CONG. 2. COMMITTEE ON ARMED SERVICES, US SENATE.

MEDICAL CARE FOR ARMED SERVICES PERSONNEL

AND

CREDITING CADET, MIDSHIPMAN, OR AVIATION CADET SERVICE FOR PAY PURPOSES

HEARING

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES UNITED STATES SENATE

EIGHTIETH CONGRESS

SECOND SESSION

ON

S. 1649

A BILL TO AUTHORIZE THE PAYMENT OF CERTAIN CLAIMS FOR MEDICAL CARE AND TREATMENT OF PERSONNEL OF THE ARMY, NAVY, MARINE CORPS, COAST GUARD, COAST AND GEODETIC SURVEY, AND PUBLIC HEALTH SERVICE FURNISHED OTHER THAN BY ACTIVITIES OF THE FEDERAL GOVERNMENT, AND FOR OTHER PURPOSES

H. R. 1275

AN ACT TO AUTHORIZE THE PAYMENT OF CERTAIN CLAIMS FOR MEDICAL TREATMENT OF PERSONS IN THE NAVAL SERVICE, TO REPEAL SECTION 1586 OF THE REVISED STATUTES, AND FOR OTHER PURPOSES

S. 657

A BILL TO PROVIDE THAT SERVICE AS A CADET, MIDSHIPMAN, OR AVIATION CADET SHALL BE CREDITED FOR PAY PURPOSES, AND THAT SERVICE AS A CADET OR MIDSHIPMAN SHALL BE CREDITED FOR RETIREMENT PURPOSES, IN THE CASE OF MILITARY AND NAVAL PERSONNEL

MARCH 5, 1948

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MEDICAL CARE FOR ARMED SERVICES PERSONNEL AND CREDITING CADET, MIDSHIPMAN, OR AVIATION CADET SERVICE FOR PAY PURPOSES

FRIDAY, MARCH 5, 1948

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,
Washington, D. C.

The subcommittee met at 10 a. m., pursuant to notice, in Room 212, Senate Office Building, Senator Wayne Morse, chairman of the subcommittee, presiding.

Present: Senators Morse and Kilgore.

Also present: Admiral Joseph Farley, Commandant, United States Coast Guard; Rear Adm. John V. Roper, Bureau of Naval Personnel, United States Navy; Capt. I. H. Nunn, Office of the Judge Advocate General, United States Navy; Capt. F. P. Gilmore, Medical Corps, United States Navy; Lt. Comdr. J. L. Kenner, assistant for Legislative Bureau of Naval Personnel, United States Navy; H. E. Gibbs, Bureau of Medicine and Surgery, United States Navy; Brig. Gen. D. C. Strouther, Director, Military Personnel, Department of the Air Force; Col. G. D. Campbell, Military Personnel, Department of the Air Force; Brig. Gen. E. A. Evans, executive director, Reserve Officers Association; Vice Admiral H. G. Hamley, president, Retired Officers Association; Lt. Gen. W. S. Paul, Personnel Administration, Department of the Army; Capt. F. O. Willenbucher, United States Navy (retired), vice president and legal counsel, Retired Officers Association; Col. Robert L. Lancefield, Legislative and Liaison Division, Department of the Army; L. L. Gourley, legal counsel, American Osteopath Association; Col. W. D. Graham, Surgeon General's Office, Department of the Army; Admiral L. E. Denfeld, Chief of Naval Operations, United States Navy; Justice M. Chambers, committee staff member.

Senator MORSE. The hearing will come to order.

The committee will proceed with consideration, first, of S. 1649 and H. R. 1275.

S. 1649 is the Saltonstall bill to authorize the payment of certain claims for medical care and treatment of personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service, furnished other than by activities of the Federal Government.

At this point the two bills will be placed in the record.

(The bills under consideration, S. 1649 and H. R. 1275, are as follows:)

[S. 1649, 80th Cong., 1st sess.]

A BILL To authorize the payment of certain claims for medical care and treatment of personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service furnished other than by activities of the Federal Government; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That claims arising out of the furnishing of necessary medical care and treatment other than by activities of the Federal Government to officers and enlisted persons (including midshipmen, cadets, and nurses) of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service may be paid by the Secretary of War in the case of personnel of the Army, the Secretary of the Navy in the case of personnel of the Navy and Marine Corps, and by the Surgeon General of the Public Health Service in the case of personnel of the Coast Guard, Coast and Geodetic Survey, and Public Health Service, or by their designated subordinates: *Provided*, That the benefits of this Act shall apply only to a person who was in an active-duty status at the time he received the medical care and treatment for which the claim is made, but no person otherwise entitled to the benefits of this Act shall be deprived thereof solely by reason of the fact that he was on leave at the time he received the medical care and treatment for which the claim is made: *And provided further*, That no such claim or part of such claim shall be paid if the medical care and treatment represented thereby could have reasonably been obtained from an activity maintained by the Federal Government, either at the commencement, or during the course, of such necessary care and treatment.

SEC. 2. Regulations for the payment of such claims shall be prescribed by the Secretary of War, the Secretary of the Navy, and the Administrator of the Federal Security Agency. Such regulations shall be uniform for the services concerned and shall be approved by the President.

SEC. 3. For the purposes of this Act "medical care and treatment" shall include medical, dental, and hospital care and treatment, and the medicines, supplies, and services necessarily attendant thereto.

SEC. 4. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to effectuate the purposes of this Act.

SEC. 5. Section 1586 of the Revised Statutes (34 U. S. C. 921), is hereby repealed.

SEC. 6. This Act shall become effective forty-five days after the date of its enactment.

[H. R. 1275, 80th Cong., 2d sess.]

AN ACT To authorize the payment of certain claims for medical treatment of persons in the naval service; to repeal section 1586 of the Revised Statutes; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1586 of the Revised Statutes (U. S. C. Annotated, 1940 edition, title 34, sec. 921) is hereby repealed.

SEC. 2. The Secretary of the Navy is authorized and directed to promulgate regulations providing for the reimbursement of persons in the naval service for the cost of emergency or necessary medical services, including hospital service and medicines, from civilian sources when the person receiving the service is in a duty status: *Provided, however*, That reimbursement will be made under this Act only if it is determined that no medical service was available from a Federal source.

SEC. 3. For the purpose of this Act a person shall be regarded as in a duty status in the naval service while on authorized liberty or leave.

Passed the House of Representatives March 1, 1948.

Attest:

JOHN ANDREWS, *Clerk.*

Senator MORSE. We will now hear the witnesses from the Navy who desire to testify in behalf of this bill.

STATEMENTS OF I. H. NUNN, CAPTAIN, OFFICE OF THE JUDGE ADVOCATE GENERAL OF THE NAVY, AND J. L. KENNER, LIEUTENANT COMMANDER, ASSISTANT FOR LEGISLATIVE BUREAU OF NAVAL PERSONNEL, UNITED STATES NAVY

Commander KENNER. The subject bill if enacted would repeal section 1586 of the revised statutes (34 U. S. C. 921), which was derived from the act of July 15, 1870.

This statute now reads as follows:

> Expenses incurred by any officer of the Navy for medicines and medical attendance shall not be allowed unless they were incurred while he was on duty, and the medicines could not have been obtained from naval supplies or the attendance of a naval medical officer could not have been had.

Repeated decisions of the Comptroller General have interpreted the above statute to mean that naval officers on authorized leave of absence are not considered as being "on duty" within the meaning of that statute. Thus, naval officers on authorized leave who incur injury or illness requiring immediate medical care and whose situation is such that they are unable to obtain it from Government medical facilities must bear any such medical costs at their own expense. The Navy Department has long realized that many such instances are entirely beyond the control of the officers concerned and would willingly pay them the bona fide claims for such medical expenses, but there is no authority to do so. It is clearly recognized that emergency medical cases frequently arise where it is impossible due to the location of the officer concerned to obtain Government medical care, and he must resort to private doctors or hospitals. A particular case in point is that where officers are ordered to new duty stations with delay en route to count as leave. It occasionally happens that such officers while traveling to their new stations are injured or taken seriously ill in locations where only private medical facilities are available.

Under such circumstances very sizable debts can be incurred by such officers through no fault of their own, and the Navy Department is without power to reimburse them for the cost of this medical care which is normally borne by the Navy.

Furthermore, through other decisions of the Comptroller General, the Navy Department is prevented from canceling the officer's leave under such circumstances in order that he may be in a duty status within the meaning of the law.

It should be noted that officers of the Navy and Marine Corps constitute the only group of personnel in the armed services who cannot be reimbursed for the cost of justifiable medical services incurred while on authorized leave. Officers and enlisted men of the Army, and presumably of the Air Forces, have had such authority under War Department appropriation acts since 1943.

All personnel of the Coast Guard, the Coast and Geodetic Survey, and the Public Health Service are so covered by the Public Health Act of 1944. The Comptroller General in his opinion of June 27, 1944, has reasoned that in view of the legislative intent expressed in the Army appropriation acts and the wording of the Navy appropriation acts that enlisted personnel of the naval service are likewise entitled to be reimbursed for private medical costs incurred while on

authorized leave and when Federal medical services are not available. He further stated, however, that such benefits cannot be extended to officers of the naval service because of the expressed wording of section 1586 of the Revised Statutes.

The enactment of this bill will remove this manifest discrimination now existing against officers of the Navy and Marine Corps. The Navy Department strongly recommends favorable action on this legislation. It is estimated that the annual additional cost resulting to the Government would be $10,000.

The Director of the Bureau of the Budget has stated that there would be no objection to the provisions of this bill.

Senator MORSE. Am I to understand that the officers of the Army do not find themselves suffering from this handicap at the present time?

Commander KENNER. That is correct.

Senator MORSE. I notice that the title of the bill covers the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service. You really do not need to cover the Army.

Captain NUNN. S. 1649 is a bill which would cover all branches It is not necessary except in the case of naval officers; therefore, the companion bill of S. 1649 was heard in the House. They substituted H. R. 1275 which applies only to the Navy in the place of that bill and it passed the House on the 1st of March.

The only remedial legislation to make the thing clear across the board for all components of the services is H. R. 1275.

Senator MORSE. Let us make the record perfectly clear. Am I to understand that H. R. 1275 covers this situation completely and that the passage of H. R. 1275 as a substitute for S. 1469 would meet the problem completely?

Captain NUNN. That is correct, sir.

Senator MORSE. For the purpose of the record, let me take two hypotheticals. You are on active service and some week end you decide to drive to Annapolis. In the course of that trip you have an automobile accident and your leg is broken. You would be taken to the Bethesda Naval Hospital and treated at the expense of the Government?

Captain NUNN. Yes, sir.

Senator MORSE. The fact that you were simply taking a week-end trip on your own time, so to speak, does not make any difference?

Captain NUNN. That is correct, sir.

Senator MORSE. You are protected, as are the Army personnel.

Suppose you ask for and are granted a 30-day leave to attend the funeral of a relative and help to close out the estate, which is a common type of leave, is it not?

Captain NUNN. It is, sir.

Senator MORSE. And on the way to the funeral you have an automobile accident and break your leg right in front of the Bethesda Naval Hospital. Am I to understand that you would not be eligible to be taken into that hospital under those circumstances and have your medical expenses paid?

Captain NUNN. No, sir. Under those circumstances I would be entitled to receive the Government medical treatment just as if I were on active duty. However, if that same accident occurred to me in front of a civilian hospital, far removed from any Government

medical facilities and I was taken into the civilian hospital and given necessary emergency treatment before I would be moved to a Government hospital, when the doctor in the civilian hospital sent me a bill I could not submit to the Bureau of Medicine and Surgery a claim and receive reimbursement from that claim because I was a Navy officer.

If I were an Army officer or naval enlisted man, I could receive reimbursement for that civilian hospital bill. This bill would allow me to be reimbursed by the Navy Department for my hospital treatment, necessary treatment, in the same fashion as is allowed officers of the Army and enlisted men of the Army and the Navy and the Marine Corps.

Senator MORSE. Then the record should make very clear that when a naval officer is in fact on leave and is taken ill or in injured and he is in proximity to naval medical centers so that he can receive naval medical attention, then he is taken care of at Government expense.

Captain NUNN. Exactly.

Senator MORSE. But if while on leave he is taken into a civilian hospital because the accident occurs in the proximity of that hospital and the emergency nature of the case is such that he needs medical attention, and is attended by a civilian doctor and receives the treatment of the civilian hospital, then he must pay all of those medical expenses out of his own pocket because the law as presently written does not entitle that civilian doctor and that civilian hospital to be reimbursed out of Government funds?

Captain NUNN. That is correct.

Senator MORSE. But if you wore the uniform of the Army instead of the Navy under the exact circumstances, then the civilian doctor and the civilian hospital would be reimbursed by the Government and not by the Army officer?

Captain NUNN. That is correct, sir.

Senator MORSE. I think I understand the case.

Colonel Chambers tells me there is a difference in the point of view on the bill that we have just heard, so the chairman will now hear from the Army witnesses.

STATEMENT OF COL. WILLIAM D. GRAHAM, CHIEF, HOSPITAL DIVISION, SURGEON GENERAL'S OFFICE, DEPARTMENT OF THE ARMY

Colonel GRAHAM. There is no actual difference of opinion, sir, but at the present time in each appropriation bill that is presented to the Congress there is a provision made for the treatment in emergencies of both officers and enlisted men of the Army and currently of the Air Force for civilian medical attendance at Government expense while they are on leave.

However, there is no provision in permanent legislation for that. That is included each year in the appropriation act, and has been for many years.

Therefore, Senate bill 1649 provides for all of the armed forces, for the Coast Guard and Geodetic Survey and Public Health Services, the same provisions in permanent legislation and is more desired by the Army and Air Force than would permanent legislation for the Navy alone.

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Senator MORSE. Let me see if I understand the difference between the two bills on the point that you testified in regard thereto.

S. 1649 contains a provision that provides for permanent appropriations taking care of medical expenses incurred in civilian medical establishments by Army and Navy personnel while on leave, whereas H. R. 1275 does not provide for any permanent appropriation for such expenses. Is that the difference?

Colonel GRAHAM. It does not provide permanent legislation for any service except the Navy, whereas S. 1649 provides for all the services that are named in the summary of the bill.

Senator MORSE. Then I misunderstand the situation, if I understand that the only officers now who are not covered by existing legislation are Navy officers.

Colonel GRAHAM. That is correct, sir.

Senator MORSE. What happens to an Army officer?

Colonel GRAHAM. The coverage for the Army personnel is contained in the yearly appropriation act in phraseology which says in effect that medical care or treatment of patients whether on duty or on furlough can be obtained from civilian hospital or civilian physicians.

However, it is not permanent legislation and it comes up every year as a different issue, whereas H. R. 1275 would be a permanent authorization for naval personnel only.

Captain NUNN. Mr. Chairman, H. R. 1275 does not constitute permanent authorizing statute for naval personnel. If it were enacted, then the Navy Department would be enabled through its annual appropriation bill each year to pay these claims. All that H. R. 1275 does is to repeal section 1586 of the Revised Statutes, which is the thing that the Comptroller General has cited to show that naval officers by that statute cannot get the claims paid even if the funds are appropriated for it.

So by the repeal of section 1586 of the Revised Statutes naval officers would be placed in the same category as Army officers, Army enlisted men, and Navy enlisted men in that we would be free to have our payments made out of the annual appropriation act each year.

Senator MORSE. Senator Kilgore, I want to bring you up to date on the situation. This is the case that involves two bills, S. 1468 and H. R. 1275, and it covers this hypothetical situation. A Navy officer is injured while on leave and he has to be rushed to a civilian hospital because that is the only medical service available to him. He is treated for a broken leg or some other injury.

The civilian hospital and civilian doctor have to send the bill to the Navy officer because as the law exists today the Government is not permitted to pay that bill.

Now the Navy officer is the only officer in the armed forces that is subjected to that ruling and the objective of this legislation is to put the Navy officer on the same status with all the others.

Senator KILGORE. That is what I was going to ask. They stated that was taken care of in the appropriation. You do have an authorizing bill on Army officers; do you not? Is there not a general authorizing bill of that kind?

Colonel GRAHAM. The captain quoted a bill with which I am not familiar and I do not know.

Senator KILGORE. Is the Coast Guard here?

Mr. CHAMBERS. I can give you the information on the Coast Guard. They are covered by the Public Health Service law which gives them specific authority in this field to pay medical expenses.

Senator KILGORE. That is the Public Health Service and Coast Guard. What about the Army?

Mr. CHAMBERS. The Army is covered by appropriation language, which they have had since 1943.

Senator KILGORE. You mean the appropriation bill carries the authorization with it?

Mr. CHAMBERS. That is the statute as I understand it.

Captain NUNN. That is correct, but the naval officers cannot be authorized in the appropriation bill to receive these payments because of section 1586 of the Revised Statutes, which stand in the way.

Senator MORSE. And which H. R. 1275 repeals.

Senator KILGORE. H. R. 1275 only affects naval officers?

Captain NUNN. Yes, sir.

We would be forced, if H. R. 1275 were enacted, each year to secure our authority and our funds just as the Army has to do now for the payment of these claims.

Senator MORSE. First, I should say, Senator, that H. R. 1275 passed the House March 1.

Senator KILGORE. I know that.

Senator MORSE. Before you came in and before the colonel started to testify, not knowing that the Army had another point of view on it, I suggested to Colonel Chambers that he prepare a report setting forth the reasons as to why the full committee should recommend H. R. 1275 as a substitute for S. 1649.

The colonel is presenting testimony as to why he thinks S. 1649 should be the bill recommended by the committee. Is that correct?

Colonel GRAHAM. That is correct.

Senator KILGORE. Could I ask a question?

Senator MORSE. Yes.

Senator KILGORE. In H. R. 1275, line 8, you use the words "emergency or necessary." Why not use the words, "emergency and necessary"?

Captain NUNN. That would be perfectly all right, sir.

Senator KILGORE. This is what I am trying to get at, Captain Nunn. When an officer is on leave and an emergency arises and where there is no medical facility of the services available, the question is whether the word "or" should not be changed to "and" for a long period of care and, as soon as it can be safely done, he should be moved to a Government facility for the length of the treatment.

Captain NUNN. We put the words "necessary or emergency" in there to indicate that was the kind of treatment that was contemplated.

Senator KILGORE. You sort of separate it by the word "or"?

Captain NUNN. "And" would be just as good a word there.

Senator MORSE. Colonel, does your request boil down simply to a request that we pass legislation now that authorized a permanent appropriation to meet such medical expenses for all personnel and all services?

Colonel GRAHAM. Yes, sir. We have nothing against correcting the situation in which the Navy officer finds himself at all. The bill H. R. 1275 is certainly a desirable thing. As I understand it, we have

no permanent legislation which justifies the early language of the appropriation act on which we do make such payments and therefore the bill S. 1649 would be more appropriate and give the same legislative support to the officers and enlisted men of all branches.

Senator MORSE. You would have to have a few technical amendments added to it because apparently it was asked before the reorganization and it does not say anything about the Air Forces and it refers to the Sedretary of War instead of the Secretary of the Army.

Mr. CHAMBERS. Sir, I might add we have been asked by letter to delete those agencies covered by Public Health Service law, because their language is adequate and they see no need to be included in this bill.

Senator KILGORE. Also, they are in a different status because the Coast Guard is frequently isolated, two or three to a small station where there is no Government facility.

Mr. CHAMBERS. That is right.

Senator KILGORE. And you have to have medical service from civilian facilities to take care of them all the time, not only on emergencies but under all sorts of cases.

Mr. CHAMBERS. That is correct.

Senator MORSE. Now, if an Army officer is injured, under the hypothetical case I put a while ago, namely, he is injured while on leave to attend the funeral of a relative and he has to be taken to a civilian hospital for treatment by a civilian doctor, the doctor in the hospital gets paid by the Government; does he not?

Colonel GRAHAM. That is correct.

Senator MORSE. Why do you need to change that situation by way of legislation?

Colonel GRAHAM. We do not need to change it, sir. We want to continue it, however. I think Senator Kilgore asked the question to which I do not know the answer: Is there permanent legislation on which our appropriation act is framed? I do not believe there is. I think Captain Nunn may know a little more about that.

Captain NUNN. There is not a separate authorizing statute, sir. The authorizing language is carried each year in the Army's annual appropriation bill, as it could be done in ours.

Senator MORSE. What is wrong with that?

Captain NUNN. Nothing, sir; so far as I see. It works well.

Senator MORSE. Do you know anything wrong with that, Colonel?

Colonel GRAHAM. No; except as I understand it, Captain, the reason you are supporting H. R. 1275 is because there is a prohibition to the execution of that phrase.

Captain NUNN. For naval officers.

Senator KILGORE. In other words, you want the prohibition repealed and placed in the same status with the Army?

Captain NUNN. Yes, sir.

Senator MORSE. That is what H. R. 1275 does and we are in this parliamentary situation. We have one bill which has passed one House. I do not need to tell you gentlemen that is quite an asset.

Senator KILGORE. Not only an asset, but it is an accomplishment.

Senator MORSE. If it is going to do the job of putting the naval officers on a par with all the other officers of the branches of the service, why should we start plowing legislative land that we do not need to plow by way of proposing S. 1649 which apparently seems to have permanent authorization in the appropriation bill.

The armed services can take care of the matter, as they have always been able to take care of it. There is no testimony that they have suffered by the fact that they have had to come in each year and include a paragraph that covers that case. What is wrong with that?

Captain NUNN. Nothing, sir. That is what we propose to do if H. R. 1275 is enacted; just as the Army does now.

Senator MORSE. On the tentative basis, Senator Kilgore, I think the chairman will return to his previous request that Colonel Chambers prepare us a tentative report on H. R. 1275 as a substitute for S. 1649.

Senator KILGORE. I concur with you on that.

Senator MORSE. We can always change it in the full committee.

Senator KILGORE. I want to raise this question publicly. The matter has been brought to my attention asking for an amendment to H. R. 1275, on line 8, after the word "medical" add the words "and other legal remedial services." I ask if the Army and Navy would have any objection to that "and other legal remedial services."

Colonel GRAHAM. We prefer not to have that. We prefer it as it is.

Captain NUNN. I think we would too, sir. It opens up a new field for us, one upon which I have no advice from the people in the Navy Department.

Senator KILGORE. Senator Baldwin stated, Senator Morse, that the Supreme Court of the State of Connecticut has reversed a case where charges were made for other legal remedial services. In this case the services of a Christian Scientist practitioner had been billed and the supreme court held it was legal and should be paid by an insurance company in a damage suit.

Senator MORSE. That was the State supreme court?

Senator KILGORE. The State supreme court.

Senator MORSE. Do you remember when we put through the last-minute pay raise for doctors?

There was a considerable discussion on including the osteopaths and the compromise was made on the floor of the Senate, as the record will show, that we would renew the matter when we proceeded to consider permanent legislation in this session. This is only fragmentary legislation seeking to correct again I think, as I recall, a Navy problem, and Senator Murray, of Montana, you will remember, was pressing for an amendment to that legislation which would have required conference in the House involving the osteopaths.

I was floor leader of the Senate bill. We went into an understanding then that we would renew the matter when other legislation came before the Armed Services Committee affecting medical care. I suppose this particular bill is seeking to put the Navy officers on exactly the same status that the Army officers are on now.

It is true, is it not, that you make available osteopaths to the Army and Navy officers through the medical services of the Army and Navy?

Captain NUNN. There is some of that available to them, but we do not think of it, nor as a matter of fact, do I believe it is of an emergency or necessary nature which is all that this envisions, just first aid until the man can be moved.

Senator MORSE. Does the term "medical services" as used by the Army and Navy at the present time exclude osteopath treatment?

Captain NUNN. I believe osteopathic physicians often give what we consider to be medical services, sir, even to the extent of surgery in some cases.

Senator MORSE. I understand that Mr. Gourley is here representing the osteopaths. I shall be glad to hear Mr. Gourley on this matter.

STATEMENT OF L. L. GOURLEY, LEGAL COUNSEL, AMERICAN OSTEOPATHIC ASSOCIATION

Mr. GOURLEY. When H. R. 1275 passed the House on March 1 the question was raised on the floor of the House as to whether medical service and care does include osteopathic services, and Mr. Blackney, who was in charge of the bill, replied while there was no specific provision in the bill, he was informed by the Department that osteopathic services would be within the purview of this bill and would be authorized under this definition.

Senator MORSE. Under the definition of "medical service?"

Mr. GOURLEY. Yes, within the meaning of this bill. In other words, if this bill should be passed as is, it would cover osteopathic services by osteopathic physicians and services by osteopathic hospitals.

So if there is any question about it now, I would like to have it cleared up.

Captain NUNN. Mr. Chairman, I do not believe there is any question about it. I think the statement made is correct. I recall a recent decision of the Judge Advocate General in the case where a man was absent over leave and presented as a matter of defense, a certificate from an osteopathic physician that he was ill. That certificate was accepted as the certificate of a medical man and I believe that there would be no difficulty along those lines.

Senator KILGORE. On the question raised under H. R. 1275, would it not be a discretionary proposition with the Secretary of the Navy, for instance, as to whether the work was necessary and of an emergency nature?

Captain NUNN. That is correct.

Senator KILGORE. In other words, if a man received treatment that was not emergency treatment, they could so rule?

Captain NUNN. Yes, sir; that is right.

I am advised by Dr. Gilmore that we have authority now to pay these emergency hospital claims of enlisted men. I am advised that we do actually now pay osteopathic bills in cases of emergencies.

Mr. GOURLEY. If I may say, Senator, about 20 years ago the Comptroller General held that it would be inappropriate under the laws at that time to pay for osteopathic services because they were not available in the Army and Navy. Therefore this does change that situation. If this bill does pass then the Comptroller General would not be within his rights in vetoing payment of osteopathic physicians.

Captain NUNN. And apparently he does not do so now; we pay them.

Senator MORSE. You are satisfied, Mr. Gourley, on the basis of the House debate and on the basis of the language of this bill that the osteopaths are protected in this bill?

Mr. GOURLEY. I think the legislative history makes it quite clear. I think that the second section is an authorization to make payments for medical care and that it does include care rendered by osteopathic physicians and hospitals.

Senator KILGORE. In spite of that, it would require money to be set up in each appropriation bill to provide the funds with which to work, regardless of the authorization.

Mr. GOURLEY. Yes. I suppose they have to get money to pay for all these services.

Senator KILGORE. If money was not appropriated in the appropriation bill to take care of it, the fact that there was an authorization would not just make the Treasury of the United States liable for bills without the appropriation.

I am talking about H. R. 1275. Is that your theory?

Mr. GOURLEY. That is entirely so. I do not know so much about the Senate but I know that the House Appropriations Committee raised the question from time to time that they do not like to carry appropriations for which there is no permanent authorization.

I know that they do take that attitude occasionally.

Senator KILGORE. Senator Morse, may I say to the captain that this question of changing that was brought up to me by a former Navy chaplain. I am not a Christian Scientist and do not know anything about it, but he said there were a number of Crhistian Scientists in the Office of Personnel of the Navy Department and a number of cadets in the Navy who would become office personnel and they would be discriminated against by an act of this kind and it would amount to discrimination, that he felt this should be taken care of by the use of the words "and legal remedial." He agreed to that.

That would depend on whether it was classed as legal remedial, and I cited a case in Connecticut as to what one Supreme Court held on it.

I brought that up as a suggestion because it does seem to me sometimes as if we should not go against the avowed religious beliefs of office personnel and require them to accept something to which they are conscientiously opposed in a bill.

Captain NUNN. This bill addresses itself more, as I say, to the emergency and necessary medical services.

Senator KILGORE. I would say the discretionary power there would go to that, too, because the question would then arise, was this an emergency or was this just a consultation with a minister or something of that kind.

Captain NUNN. Of course, we open up a rather difficult administrative field there. I have a feeling from our standpoint it would be wiser to omit it, sir.

Senator MORSE. Would it be satisfactory to you, Senator Kilgore, that Colonel Chambers proceed with the preparation of his report and we raise that matter before the full committee?

Senator KILGORE. I think so, and also the proposition of changing "or" to "and" on line 8. I do not know whether it is found any place else or not.

Mr. CHAMBERS. I will check on that, Senator.

Senator MORSE. Then we will not take up S. 657 and we will hear from Admiral Denfeld.

(The bill S. 657 is as follows:)

[S. 657, 80th Cong., 1st sess.]

A BILL To provide that service as a cadet, midshipman, or aviation cadet shall be credited for pay purposes, and that service as a cadet or midshipman shall be credited for retirement purposes, in the case of military and naval personnel

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 3A of the Pay Readjustment Act of 1942, as amended, is hereby amended to read as follows:

"SEC. 3A. In computing the service for all pay purposes of persons paid under the provisions of section 1, 3, 8, or 9 of this Act, such persons, in addition to the time required to be credited by the section under which they are paid, shall be credited with full time for all periods during which they were enlisted or held commissions as officers or held appointments as cadets, as midshipmen, as aviation or flying cadets, or as warrant officers, or Army field clerks, or as commissioned warrant officers in any of the services mentioned in the title of this Act, or in the Regular Army Reserve, or in the Medical Reserve Corps of the Navy, the Dental Reserve Corps of the Navy, or in the Organized Militia prior to July 1, 1916, or in the National Guard, or in the National Guard Reserve, or in the National Guard of the United States, or in the Enlisted Reserve Corps, or in the Naval Militia, or in the National Naval Volunteers, or in the Naval Reserve Force, Naval Reserve, Marine Corps Reserve Force, Marine Corps Reserve, Coast Guard Reserve, and the Reserve Corps of the Public Health Service, or in the Philippine Scouts, or in the Philippine Constabulary, or in the Coast and Geodetic Survey as authorized by section 2 (b) of the Act of January 19, 1942 (56 Stat. 6). The provisions of this section shall not be construed to permit any person to receive pay and allowances in excess of the maximum limitations imposed upon the total pay and allowances of his rank, grade, or rating by any of the provisions of this Act, nor to modify the character of service required for advancement of commissioned warrant officers to a higher pay period."

(b) The amendment made by subsection (a) shall become effective as of June 1, 1942; but no back pay or allowances for any period prior to June 1, 1942, shall accrue by reason of such amendment, and no back pay or allowances shall accrue by reason of such amendment to any person who is not entitled to receive active or retired pay on the date of the enactment of this Act.

SEC. 2. (a) In computing length of service for the purposes of retirement in the case of any officer of the Army, Navy, Marine Corps, or Coast Guard, such officer shall be credited with full time for any period, whether before or after the enactment of this Act, during which he held an appointment as a cadet at the United States Military Academy or in the United States Coast Guard or as a midshipman in the United States Navy.

(b) The provisions of subsection (a) shall become effective on the sixtieth day following the date of enactment of this Act.

STATEMENT OF ADMIRAL L. E. DENFELD, UNITED STATES NAVY, CHIEF OF NAVAL OPERATIONS

Senator MORSE. Admiral Denfeld, we are very glad to have you with us this morning and are glad to have your viewpoint on this bill.

Admiral DENFELD. Thank you, sir.

I have a short statement that I would like to read.

During the past 2½ years, the Navy Department has made considerable progress in a concerted effort to remove any discriminations that have existed against various groups of its personnel. Both justice and a healthy state of morale require that the treatment of all personnel, as determined by the governing laws and regulations, be on a fair and equitable basis.

The enactment of the bill S. 657 would represent an important step in this direction. It would remove an unwarranted discrimination that has existed since 1942 against a large portion of the commissioned officers of all the armed services. The officers affected are those who attained their commissions by successfully completing the required

cadet or midshipman service, principally at the Military, Naval, and Coast Guard Academies.

This bill would place those officers upon an equal basis for pay and retirement purposes with all other regular and reserve personnel. The Pay Readjustment Act of 1942 for the first time authorized that all types of service, including inactive service in any of the Reserve components, would be given full credit in the computation of pay and longevity. The 1942 act excluded, however, the active service performed by cadets and midshipmen at the national academies.

It may be said that such service should not be credited inasmuch as these young men are being trained at Government expense. This is inconsistent, however, with the fact that during the war thousands of other young men were educated by the Government under the college training programs, and are now entitled to full active-duty credit for that service during which time they were enrolled as members of the Reserve components.

Inasmuch as existing law permits every other type of active and inactive service to be credited, I feel that an unhealthy situation is being created by excluding only that service performed by cadets and midshipmen who undergo vigorous training to become permanent officers in the Regular Military and Naval Establishments.

I note that the bill S. 657 in its present form would provide back pay to June 1, 1942—the effective date of the Pay Readjustment Act. It is recommended that the bill be amended so as to remove this retroactive pay feature.

May I suggest that Admiral Rope, Deputy Chief of Naval Personnel, explain to your committee the details and the effects of the bill, and offer any necessary amendments.

It is my opinion that this legislation is needed to correct an inequitable situation and to promote sound morale. I strongly recommend its enactment.

Senator MORSE. Do you have any questions, Senator Kilgore?

Senator KILGORE. Yes; I have two or three questions, Admiral.

This bill authorizing credit for longevity for inactive service of Reserve officers was occasioned by the fact that they were commissioned before being sent to school; is that right?

Admiral DENFELD. That is right.

Senator KILGORE. In other words there has been nothing that allowed longevity pay for anybody prior to the act of commissioning as an ensign or second lieutenant or first lieutenant. Is that not right?

Admiral DENFELD. I believe that is correct.

Captain NUNN. There have been some Army aviation cadets.

Senator KILGORE. What are they?

Captain NUNN. Enlisted service in all the armed services, warrant service in all the armed services, aviation cadets of the Army, and certain aviation cadets of the Navy.

Senator KILGORE. Now that enlisted service credit grew up at a time when retirement in the Army at least was limited to those who had attained the age of 60 for voluntary retirement or the age of 64 for involuntary retirement or automatic retirement or when the retirement was for disability? Is that not right, regardless of the amount of longevity they had accrued in the enlisted force, they still stayed until they were 60? Is that not right?

Captain NUNN. If they became officers, sir.

Senator KILGORE. I am talking about the Army.

Captain NUNN. All during their active career they counted this enlisted service for pay increases.

Senator KILGORE. That was for pay, but not for retirement.

Captain NUNN. Yes, sir.

Senator KILGORE. Now we have a whole lot of changes on the question of retirement.

Captain NUNN. That is right.

Senator KILGORE. For instance, a cadet from the Naval Academy, shall we say, could retire after 16 years of commissioned service with full retirement rights.

Captain NUNN. Yes, sir.

Senator KILGORE. He could enter at 17, be commissioned at 21, and retire at 37.

Captain NUNN. Yes, sir. I think that the Navy Department would give its support to amending its bill to remove the cadet and midshipmen service for purposes of becoming eligible for retirement. I think that is correct.

Senator KILGORE. I think that would be unwholesome.

Captain NUNN. I do too, Senator.

Senator KILGORE. What change have we made in Army retirement?

Mr. CHAMBERS. General Paul is here, sir, and could speak more directly to it than I could, but under present law as distinguished from administrative practice an Army officer can be retired voluntarily after 15 years' of service, but under administrative practice no one is retired voluntarily with less than 20 years' service. I believe that is correct.

General PAUL. Twenty-five years. That is, the general policy is not to allow under 25.

Senator KILGORE. I am talking about law.

Genera. PAUL. The law says 15 to 29 years. We have a bill now, Senator Kilgore, asking that that be changed to bring it in line with Navy's 20. That is in H. R. 2744 in the House right now.

Senator KILGORE. He will retire with three-quarters pay at the end of 20 years?

General PAUL. Two and one-half percent per year.

Senator KILGORE. That would be 50 percent, half pay.

I have one other question. What percent of the officers of the Regular Army come from colleges and universities other than the Academy?

General PAUL. Right now in the Regular Army we have less than 25 percent who are graduates of the Military Academy.

Senator KILGORE. What percent of the other 75 percent comes from colleges?

General PAUL. I would say probably 75 percent of the other 75 percent are college graduates.

Senator KILGORE. It seems to me inevitable not to give them credit for the college training which they took at their own expense in ROTC. It is true that the enlisted man gets credit on longevity, but here, we will say, is a man who graduates from some college and finally obtains a master's degree and decides he wants to stay in the Army. He put in 5 or 6 years of college training, maybe 4 of it in ROTC.

General PAUL. May I set forth the Army's views before we go into that?

Senator KILGORE. Yes.

General PAUL. The Army supports a substitute bill on this S. 657. The Army does not believe that it should be counted for voluntary retirement at all.

Senator KILGORE. I am also talking in the case of those officers on the question of pay status, too.

General PAUL. We believe it should be counted on pay and longevity, but we do not believe it should be counted on the retirement basis. The substitute bill does include the ROTC men.

Senator KILGORE. You know, Senator Morse, talking about the inactive status of a National Guard officer, for instance, having some 27 years I find it is a pretty active job to try to maintain a National Guard unit. It interferes very seriously with civilian occupation and money-making power, and rather than say it is inactive I would say it is pretty active.

Here we have these inequities existing. We have an Air Corps cadet who gets credit whereas a college graduate does not. We have an Air Corps cadet who gets credit whereas a cadet in West Point and Annapolis does not. I agree with you there should be an equalization here.

Mr. Chairman, could I suggest that somebody work up the exact status of all various categories that come into the Army and Navy and Marine Corps and what their pay status is, what credit they get for longevity, what percent of enlisted personnel come in as commissioned officers in all services?

Mr. CHAMBERS. We do not have that.

Senator KILGORE. I think it should be before us before we study this to see what the effect is.

Senator MORSE. Suppose we hear from Admiral Roper.

STATEMENT OF JOHN W. ROPER, REAR ADMIRAL, UNITED STATES NAVY, BUREAU OF NAVAL PERSONNEL

Admiral ROPER. I am here in the absence of Admiral Sprague, who is ill, sir.

Senator MORSE. I am sorry to hear that he is ill.

Admiral ROPER. The act of March 4, 1913, provided that the service of a midshipman appointed to the Naval Academy after that date would no longer be counted in computing the length of service of any officer in the Navy or Marine Corps.

Senator KILGORE. Could I interrupt at that point while it is fresh in my mind? Was it allowed before that date?

Admiral ROPER. Yes. All persons in the – for all persons in the Naval Academy on that date it is counted.

Senator KILGORE. Is that allowed on retirement?

Admiral ROPER. Yes, sir.

The same law placed similar restrictions upon Army officers for cadet service at the Military Academy. By the act of July 1, 1922, Congress required that officers appointed thereafter could count only active commissioned service for pay purposes. Therefore, until 1942, there was no questioning of the clear intent of Congress that

only active commissioned service was to be counted for pay and retirement purposes.

That concept was considerably altered, however, by the Pay Readjustment Act of 1942 when Congress provided that all prior and subsequent periods of active or inactive service, including that in any of the Reserve components of the armed forces, in either enlisted or commissioned status, could be counted in computing service for pay purposes. But it failed to include the active service performed by cadets, midshipmen, and certain categories of aviation cadets.

Members of the various Reserve components had previously performed little or no active duty, and in many cases only small amounts of drill or training duty. Nevertheless, the 1942 act provided that mere membership in any of the Reserve components entitled them to the regular service credit of 5 percent increase for each 3 years of such service exactly as though they had performed continuous active duty.

Thus all service performed in either an active or an inactive status on both active and Reserve components, prior to or subsequent to the enacting date, was thereafter to be credited for pay purposes—and in many cases for retirement purposes as well.

These authorized components are shown below as listed in the Pay Readjustment Act of 1942, as amended.

(1) Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service.
(2) Regular Army Reserve.
(3) Medical Reserve Corps of the Navy.
(4) Dental Reserve Corps of the Navy.
(5) Organized Militia prior to July 1, 1916.
(6) National Guard.
(7) National Guard Reserve.
(8) National Guard of the United States.
(9) Enlisted Reserve Corps.
(10) Naval Militia.
(11) National Naval Volunteers.
(12) Naval Reserve Force.
(13) Naval Reserve.
(14) Marine Corps Reserve Force.
(15) Marine Corps Reserve.
(16) Coast Guard Reserve.
(17) Reserve Corps of the Public Health Service.
(18) Philippine Scouts.
(19) Philippine Constabulary.
(20) Coast and Geodetic Survey as authorized by section 2 (b) of the Act of January 19, 1942 (56 Stat. 6).

It has been a long established principle of law and of repeated decisions of the courts that midshipmen and cadets are members of the Regular Naval and Military Establishments, and that they perform active service as such.

By law, they are subject to the Articles for the Government of the Navy or the Articles of War, as the case may be. They are completely subject to all orders from proper authority for duty in such places and on such service as the President may direct, and may be tried by general court martial. The fact that they are being trained at Government expense for naval and military service has never altered their active duty status.

All commissioned and enlisted personnel throughout their entire careers undergo varying periods of training at Government expense without being deprived of the right to count such service in the computation of their pay.

During the war, many thousands of young men were enrolled in the various college training programs, and thus received their education at Government expense. The fact that they were so enrolled as members of the Reserve components, enabled them to permanently count such service for pay purposes. But cadets and midshipmen undergoing stringent training at the service Academies, and those aviation cadets appointed prior to 1942 who were in training to be combat pilots could not be so credited for their service as such. It should be noted that since the act of August 4, 1942, all aviation cadets in the Navy have had enlisted status in the Naval Reserve; and therefore are entitled to count their training period for service credit when they become officers.

The great majority of former Reserve officers recently transferred into the Regular Navy had either inactive service prior to the war, or had received their college training during the war under the V–5 or V–12 programs. All types of previous Reserve service performed by them including inactive or training periods may be counted in the computation of their pay.

It is, therefore, apparent that since 1942 a marked discrimination has existed against the active service performed by midshipmen, cadets, and appointed aviation cadets, by excluding such service from the later computation of their pay as officers.

I should like to briefly illustrate one type of the numerous cases of discrimination that will permanently exist under the provisions of present law. Taking for example, two young ensigns in the Regular Navy of corresponding lengths of service; one is a graduate of the V–12 college training program while the other graduated from the Naval Academy at the same time. Throughout their careers, the Naval Academy ensign will receive less pay than the other, due to the fact that the V–12 college service may be credited while the Academy service may not. Then assuming that those same two officers complete 26 years' regular commissioned service, and at that point both are retired. The V–12 college service credit will permit one to receive the maximum retired pay of his grade which will be nearly 9 percent greater than that to which the Academy graduate is entitled. This is typical of many other similar situations that will result from the operation of present law

The purpose of the bill, S. 657, is to remove this discrimination that now exists against the service performed by midshipmen of the Regular Navy and Naval Reserve, cadets of the Military Academy, of the Coast Guard and Coast Guard Reserve, and aviation and flying cadets. Credits for pay purposes for the service so performed would be effective as of June 1, 1942, the effective date of the Pay Readjustment Act; but there would be no crediting of back pay and allowances prior to that time. The bill also provides that these stated periods of service would be included in the computation of the length of service required of officers for retirement purposes.

In the interests of economy, however, the Navy Department recommends against that provision of section 1 (b) of the bill which would provide retroactive back pay for the purposes stated, to June 1, 1942. Instead, it is recommended that the effective date of the bill be the first day of the first calendar month following its enactment. Accordingly, there has been submitted to your committee a substitute draft,

which would eliminate the retroactive pay features of the bill, S. 657, but will otherwise accomplish its purposes.

The enactment of the proposed substitute bill would result in an estimated additional annual cost of $2,475,000. It is estimated that the enactment of S. 657 as presently written would result in a cost of approximately $8,000,000 for the fiscal year of 1948, and an annual cost of approximately $2,475,000 for each fiscal year thereafter. In the interests of justice and equity, the Navy Department strongly recommends the enactment of this legislation and has been advised by the Director of the Bureau of the Budget that there would be no objection to the submission of this report.

Senator KILGORE. How many men came in on that?

Admiral ROPER. In the V–12?

Senator KILGORE. Shall we say deck or supply officers of the Navy from the V–12 program?

Admiral ROPER. I cannot answer that but it was several thousand, sir.

Senator KILGORE. There is no legislation, is there, that gives them credit for the V–12 program?

They get credit because they were enlisted personnel at the time they were on the V–12 program?

Admiral ROPER. That is correct.

Senator KILGORE. As distinguished from a cadet?

Admiral ROPER. That is true, sir. While in the Academy.

Senator MORSE. Admiral Roper, I have a question or two. A young man enlists in the Reserve of the Navy and he also enters as a freshman at the University of Maryland, where he goes to school for 4 years and during the entire 4 years he is on an inactive basis. Under the present law he gets credit for that time for pay purposes?

Admiral ROPER. Yes, sir; while he is active.

Senator MORSE. His closest friend enters Annapolis at the same time for 4 years and he gets no credit for pay purposes?

Admiral ROPER. For his midshipman time.

Senator MORSE. Although during the 4 years of midshipman work, as you point out in your testimony, he is subject to court martial, he is under naval discipline, he receives naval training. There is nothing inactive about his service as far as the armed services are concerned?

Admiral ROPER. That is true.

Senator MORSE. By this bill you seek as to pay purposes to bring the midshipmen at Annapolis and the cadets at West Point up to the same status as the young fellow who is in the inactive Reserve?

Admiral ROPER. That is right, so far as pay credit is concerned and retirement credit.

Senator MORSE. Now in addition to this fellow who is in the inactive Reserve, what other groups are there that have the pay advantage over the midshipmen and the cadets?

Admiral ROPER. There is quite a group that the Pay Readjustment Act includes, sir. I have them in my statement.

Senator MORSE. Read it, if you will.

Admiral ROPER. That calls for the Regular Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service.

Senator MORSE. That is the enlisted personnel?

Admiral ROPER. Officer and enlisted.

Senator MORSE. Officer and enlisted personnel of all those services have that advantage?

Admiral ROPER. Yes.

Senator KILGORE. Would a man in the Coast Guard who transfers to the Navy get credit for his Coast Guard Service for retirement?

Admiral ROPER. Yes, sir.

Senator KILGORE. Would a man in the Coast and Geodetic Survey get credit for retirement?

Admiral ROPER. Well ——

Senator KILGORE. And a man in Public Health Service?

Admiral ROPER. Yes, sir.

The service would be transferrable if it were in the proper category.

Senator MORSE. Whether they are enlisted personnel or officer personnel?

Admiral ROPER. Yes, sir. We have the Regular Army Reserve and Medical Reserve Corps of the Navy, the Dental Reserve Corps of the Navy, the Organized Militia prior to July 1, 1916, National Guard, National Guard Reserve, National Guard of the United States, Enlisted Reserve Corps, Naval Militia, National Naval Volunteers, Naval Reserve Force, Naval Reserve, Marine Corps Reserve Force, Marine Corps Reserve, Coast Guard Reserve, Reserve Corps of the Public Health Service, Philippine Scouts, Philippine Constabulary, and Coast and Geodetic Survey as authorized by section 2 (b) of the act of January 19, 1942 (56 Stat. 6).

Senator MORSE. What about these Philippine Scouts?

Admiral ROPER. Service in the Philippine Scouts is creditable for pay purposes providing he transfers.

Senator MORSE. If a man is in the Philippine Scouts as an enlisted man and he subsequently transfers to the United States Army he gets credit for his service in the Philippine Scouts for pay purposes?

Admiral ROPER. Yes, sir.

Senator MORSE. But the cadet at West Point and the midshipman at Annapolis does not?

Admiral ROPER. That is right.

Senator MORSE. Now I have before me here the proposed substitute bill with some suggested amendments about which I should like to ask you a few questions.

The first suggested amendment I understand is the one that eliminates the retroactive pay provision. I understand the Navy has no objection to that.

Admiral ROPER. No, sir.

Senator MORSE. The second amendment is one that specifically provides that it cover officers presently on their retirement list.

Admiral ROPER. Yes, sir.

Senator MORSE. You have no objection to that?

Admiral ROPER. No, sir.

Senator MORSE. The third suggested amendment is one that specifically excludes the crediting of such time in the calculation of minimum requirement for voluntary retirement. I understand you have no objection to that.

Admiral ROPER. We favor that.

Senator MORSE. The next one then is a substitute draft of the amendments which further includes additional technical drafting changes by including in section 3(a) of the Pay Readjustment Act of

1942 language to provide coverage for the officers Reserve, Medical Reserve Corps of the Army, and the contract surgeons.

These personnel are presently covered by other sections of the Pay Readjustment Act.

By this technical drafting change it places all service which can be counted for pay purposes in any one section of the act, and thereby establishes a more ready source of legal reference. So you do not have to finger through a lot of references to find what personnel is covered.

Do you have any objection to that type of change?

Admiral ROPER. No, sir.

Senator MORSE. Captain Nunn, do you have any objection to that type of change?

Captain NUNN. None, sir. That is all right.

Senator MORSE. Senator Tydings could not be here this morning as he is ill. He has raised a further request at the request of the president of the University of Maryland. It concerns the crediting of service in ROTC for pay purposes.

It seems that the Reserve Officers Association have also advocated the inclusion of such personnel, that is, not only ROTC but NOTC. What is your opinion on that?

First, let me read these comments that Colonel Chambers would have you consider.

Without including service for ROTC and with the elimination of the retroactive features of the bill, it is estimated by the services that it will cost the Government approximately $2,474,000 annually.

What is your position on the ROTC?

Admiral ROPER. As far as the Navy is concerned, we have two categories. We have what is called the regular midshipman ROTC, which is the so-called Holloway plan. He is a midshipman and would be in the same category that the midshipmen of the Naval Academy are in terms of this bill.

We have also in addition to that, a program of contract students which are ROTC, but they have benefits only during the last 2 years at college. The Government pays part of their expenses, but they are in no sense midshipmen. They are still civilians and they would not be included in the terms of this bill.

Senator MORSE. Let us look at one of these boys in comparison with the first hypothetical that I put to you. Here is a boy that enlisted in the inactive Reserve and went to the University of Maryland. He does not do a bit of work as far as the Army is concerned. He does not spend an evening a week, he does not even do as much as a National Guard man. He is just there subject to call in case we get into an emergency situation. We will call him A. However, B goes to the University of Maryland and he enrolls for the full advanced military training course but not under the Holloway plan. B, as you say, is a civilian but he enlists for the advanced military course, at the conclusion of which he gets commissioned as a second lieutenant, if he is in the Army, for that course.

That includes his summer camp training, as I recall the program. He has done a lot more work during those 4 years in that military course than the fellow A who is just in the inactive Reserve and he is not going to get any credit for that 4 years of ROTC work.

Before you comment on him, take C who is a fellow who comes in under the Holloway plan. Instead of going to Annapolis, he is sent to the University of Maryland, assuming now that they have a Navy training course there. I judge he will do just about the same work as B did but under your bill C would be covered, he would be treated as a midshipman, would he not?

Admiral ROPER. The Holloway plan of course would be the midshipman, but the contract student is never a midshipman and he does not have the supervision that the Holloway plan midshipman has and is not required to take any special courses during the first 2 years. He has special courses that he must take the last 2 years.

Senator MORSE. It must be pretty good training or you would not give him a second lieutenancy at the end of those 4 years.

Admiral ROPER. He has a Reserve commission. Of course, the Holloway plan midshipman is a potential Regular officer or Reserve.

Senator KILGORE. Now, this contract man is a potential Reserve officer. Is that right?

Admiral ROPER. Yes, sir.

Senator KILGORE. And the Holloway plan man is a potential Regular?

Admiral ROPER. Yes, sir. It is true, also, that a contract man is eligible by law to transfer to the Regular Navy and some have done so, quite a number.

Senator MORSE. When they do they do not get credit for their 4 years of college?

Admiral ROPER. No, sir.

Senator KILGORE. Do you have an enlisted Naval Reserve at the colleges?

Admiral ROPER. No, sir; not now. That is what the V–12 was.

Senator KILGORE. I mean in peacetime. I am talking about now. You do not have it?

Admiral ROPER. No.

Senator KILGORE. Is it right that the Army does have it?

General PAUL. They are not in the enlisted reserve on that. We are trying to get that worked in.

Senator KILGORE. Is that not called the Organized Reserve?

General PAUL. They come into the Organized Reserve afterward. It is ROTC we are talking about, in college.

Senator KILGORE. Do they not enlist in the Organized Reserve when they go into the ROTC course?

General PAUL. No, sir.

Senator KILGORE. When did they change the rules?

General PAUL. I could not tell you that.

Senator KILGORE. I know it was in effect in 1941. Before the war it was in effect.

Colonel LANCEFIELD. It was the Selective Training and Service Act. If the man is enlisted in the Enlisted Reserve Corps and also goes and enrolls in ROTC he is in the Enlisted Reserve Corps and also his service credit is acquired by reason of membership in the Enlisted Reserve Corps and not because of enrollment in ROTC.

Senator KILGORE. Does he get credit if he should be commissioned after that? Does he get credit for work in Reserve Corps?

Colonel LANCEFIELD. Yes, sir; he does get credit. If he is in the Enlisted Reserve Corps or is an enlisted man or in the local National Guard company, he gets credit at that time.

Senator KILGORE. The Navy has the same thing?

Colonel LANCEFIELD. As such, not as a result of ROTC enrollment.

Senator KILGORE. What about a man who has no military, has had no military training whatsoever and who enlists in the Enlisted Reserve Corps?

General PAUL. We take in very few of those, in certain special fields only, not as a general rule.

Senator KILGORE. What good is the Enlisted Reserve Corps? They have no training, they get no training. When you call them into active service they are just recruits; they are ready to start boot training in the Navy and recruit training in the Army. What I am getting at, is, Why do we have it unless there is some training attached?

I have always felt there was a certain amount of training attached for anyone belonging to the Army or Navy.

General PAUL. We do stick to that except for scientists and specialists in the Enlisted Reserve Corps.

Admiral ROPER. In the Organized Reserve the enlisted recruits do have the training; they have a drill every week and 2 weeks' training duty afloat every year. They are required to have that.

Senator KILGORE. In the Enlisted Reserve?

Admiral ROPER. In the Enlisted Reserve the recruits start training right away.

Senator KILGORE. I know that.

Senator MORSE. I have one question along the line of yours, Senator Kilgore, that you do have a body of reserves known as the Inactive Reserve, do you not, in the Navy?

Admiral DENFELD. We have the Voluntary Reserve and Organized Reserve.

Senator MORSE. The so-called Inactive Reserve is the Voluntary Reserve?

Admiral DENFELD. Yes, sir.

Senator MORSE. They do not go through any formal training at all?

Admiral ROPER. Although we do, insofar as the funds will permit, allow Voluntary Reserves to go on training cruises and a good many have done so.

Senator KILGORE. Let us go back to something else.

You used to have a man enlisted for a certain number of years, so many years with the colors and so many on reserve. He was a trained seaman and after he finished his service with the colors, then he stayed the rest of his enlisted time as a naval reservist, we call them, subject to call, but taking no training. You do not have that any more?

Admiral ROPER. We have what is called the Fleet Reserve. They have had 20 years' service. They must have had 20 years' service by law to transfer to the Fleet Reserve and they are in the Fleet Reserve until they are about 30 years' total service at which time they transfer to the retired list.

Admiral DENFELD. A great portion of our Voluntary Reserve now is made up of men who have had war service and it is true they do not have to have any training but they are qualified in the Navy and are subject to call.

Senator KILGORE. Then your Fleet Reserve now really consists of naval enlisted personnel who have retired on the 20-year plan, what we call retired, but they have drawn retirement pay but are in the Fleet Reserve for an additional 10 years?

Admiral ROPER. That is retainer pay.

Senator KILGORE. The same as retirement?

Admiral ROPER. That is the same amount.

Senator KILGORE. Do they get credit at the end of 30 years for that additional service?

Admiral ROPER. No, sir.

Senator KILGORE. You just change the name of the pay from retainer pay to retirement pay at the end of 30 years?

Admiral ROPER. Yes, sir.

Senator MORSE. If this subcommittee recommends to the full committee the principles of this bill, involving the suggested amendments, it will be my job with the able assistance of my colleagues on the committee to defend the bill before the full committee. I can hear one of the first questions that will be put to me and I have to have an answer for it.

Why pass this bill? Why not take away the pay allowance already granted, even it up by taking it away?

What is your answer to that? I do not mean to put that facetiously, I mean it exactly that way because it will be asked of me.

Senator KILGORE. It will be asked on the floor, too.

Senator MORSE. It will be asked on the floor and the argument will go something like this: We have been passing this military legislation piecemeal and what these boys have been doing is moving us up the ladder a rung at a time. I put the figure, we have two ladders and a foot on each one. The Navy comes in one year and it gets a bill through and the Army wakes up the next year that the Navy has the advantage on them in that bill and so they propose one to even things up.

Senator KILGORE. They go one step higher.

Senator MORSE. That is the way we climb the ladder. The time has come, the argument will run, to look into all these bills instead of always evening it up that by passing legislation that results in increases in appropriations it is about time to pass some legislation that levels it off by reducing some of the benefits they already have obtained.

What am I going to say about that?

Admiral ROPER. I would say sir, that it would be unprecedented as far as I know to take some credit away from those who already have it. It might be taken away from those who might acquire it in the future, but so far as I know there has been no congressional action to take away from the ones who already have it.

Senator MORSE. I think that is probably true but they could propose legislation that stops giving that credit to new personnel coming within those classifications and not take anything away from people that already have it.

Admiral ROPER. Should that take place, there would still be a need for this bill to take care of the discrimination against those who have it already in one category and do not have it for the Naval Academy; this discrimination would exist.

Senator MORSE. Only to those already in the service.

Admiral ROPER. That is right.

Senator MORSE. But if this proposed the passage of a bill which said from this day forward the man that enlists in the inactive Reserve cannot count his term in the inactive Reserve for pay purposes and take all the other classifications that you read off to me a few minutes ago, new personnel coming into those classifications shall not in the future be allowed to count that time for pay purposes, that would even it up and the only group that you would have that would have a favorable discrimination, their pay would be under that classification.

Admiral ROPER. It would not take care of my examples in my statement, sir, of the V–12 student who has already transferred and counts his service whereas the naval graduate has not.

Senator MORSE. I agree we could not correct that.

Admiral ROPER. Of course, there is one other point that I should make. Credit for service in the Reserve is presumably one of the incentives to getting a good Reserve to join up.

Senator MORSE. Now we are beginning to get some positive arguments that could be used to rebut the point of view of the person that will ask the question that I am talking about. What can we say constructively which justifies this bill in answer to a claim by some that what we ought to be doing is cutting back rather than adding benefits? One point you make now is that you are having difficulty getting personnel at it is.

Admiral ROPER. Yes, sir.

Senator MORSE. And that this would prove to be a further handicap on your recruiting program?

Admiral ROPER. That is right.

Admiral DENFIELD. I think it is true, Senator Morse, that it is only as to the young people coming into the Reserve, if you could give them these, because they are subject to call immediately whenever there is an emergency or whenever we go to war.

You notice the pay in the Navy is much less, much less in the Army and in the Navy, than for the man in civilian life, and if he is called immediately he has a great many adjustments to make. If he is not in the Reserve and is not called immediately by the draft law, he has much more time and if he has a lot of dependents he is likely to be exempt, whereas if he is in the Reserve he has to come to the service immediately, regardless of the size of his family or the state of his business. It is really a problem for a great many of those young people and it would be well to give them all the credit that the country can give them in coming into the service.

Senator MORSE. I think, Admiral, that some of those arguments we would need to work them out to be included in any committee report that we might file if we vote to support this legislation because, and Senator Kilgore can check me on this, I think it is only fair to say—not only a question of fairness but a question of facing the realities—and I feel that within the Senate these days there is a considerable amount of sentiment for scrutinizing very carefully legislation which seeks to give additional benefits to service personnel and it is not a question of whether that is right or wrong; I am just reporting what I think the sentiment is in a good many quarters.

There is concern over disability legislation, concern over the tendency on the part of the services to get legislation that will speed up retirement, concern over the fact that too many instances have been

cited to the committee where men are on retirement pay and pulling down $50,000 to $75,000 a year as vice presidents of this corporation or that corporation, with the result that when we have legislation such as this, that seeks to eliminate unfairness and discrimination that is existing in the services, we run into a surprising amount of expressions of doubt as to whether we ought to go ahead with any more legislation.

Do you think that is a fair statement of views that are being expressed?

Senator KILGORE. Yes.

Senator MORSE. If I am going to handle a piece of legislation such as this I have to have a case made for me that will show that this legislation stands in a class pretty much by itself because I think right now it is very difficult to get through the Senate legislation that will grant further benefits to officer personnel.

Now, I am not expressing my judgment on it, I think my record is pretty clear that we have to build up these services much more than we already have, so that we can keep ourselves in a position where we know that the men in charge of our Military Establishment are the cream of the crop, so to speak, and can give the country the protection that it needs on a moment's notice. I do not want to put through any legislation that is going to lower the competency of our officer personnel.

We have to have the best we can get but I am not going to blind myself to the fact that there have been some unfortunate incidents that have happened that have created a lot of doubt in the Senate as to whether we are not going too far in the way of benefits.

This strikes me in the way of principle as the computations for pay allowances is concerned, and I speak only for myself, it strikes me as being fair in principle and I want a case worked out for me so that I can defend it wherever I go on it.

Senator KILGORE. Senator, I would like to get something in the record at this point in the way of information.

Senator MORSE. Proceed, Senator.

Senator KILGORE. Now, the Navy has had for years and years a selective promotion system; is that not right?

The Army has quite recently adopted a selective promotion system.

Now, when a naval officer reaches the grade of lieutenant commander or commander he goes before the board?

Admiral ROPER. Selections for lieutenant now, sir.

Senator KILGORE. Lieutenant?

Admiral ROPER. Yes, sir.

Admiral DENFELD. Yes, sir.

Admiral ROPER. With the exception only as to lieutenant junior grade.

Senator KILGORE. It used to be what?

Admiral ROPER. Commander.

Senator KILGORE. Before he became a captain?

Admiral DENFELD. Before he got the grade of commander.

Senator KILGORE. If he failed to pass he was retired; is that not right?

Admiral ROPER. By the present laws.

Senator KILGORE. I am talking about the old law; I am speaking of the past. He retired and how was his pay computed?

Admiral DENFELD. Two and a half percent for a year's service.

Senator KILGORE. Say he had 20 years' service, when that time arrived that would give him half pay?

Admiral ROPER. Yes.

Senator KILGORE. If this were made retroactive, that would automatically raise his retirement pay 10 percent?

Admiral ROPER. That is true, sir. Of course, there are officers on the retired list now who were in the Naval Academy in 1913 who already have that.

Senator KILGORE. I know that; I am just talking about the effect of that because those questions are going to be raised. Of course, it would not be raised in the past on the Army but they might be raised in the past on the Navy.

We discharged a great number of officers on class B in 1921; did we not?

General PAUL. 1922.

Senator KILGORE. In 1922.

General PAUL. That was raised to 75 percent.

Senator KILGORE. They get full retirement. They went up before class B boards on retirement and they tried to pick out and leave the best ones. In other words, to get retired they had to have something against your record a little bit.

Of course, that would not affect them if they went to full retirement pay.

Senator MORSE. Then under the proposed substitute bill, those now on the retirement rolls will get the benefit of the principle that you seek by this legislation?

Admiral ROPER. Yes, sir.

Senator MORSE. But when you say that you agree that it shall be not retroactive to 1942, you mean that it shall not be retroactive to cover those people that were midshipmen or cadets at West Point back to 1942?

Admiral ROPER. No, sir; the intent of that is that there be no back pay accruing because of the Pay Rate Readjustment Act.

Senator MORSE. That is what I mean, but that they would start drawing as of now.

Senator KILGORE. The effect would be retroactive on future pay. They get a retroactive credit on retirement.

Senator MORSE. That is a good way of putting it. The effect will be that as to future pay it will be retroactive.

Admiral ROPER. Yes, sir.

Senator KILGORE. What is retirement based on now in the Navy?

Admiral ROPER. Two and a half percent.

Senator KILGORE. Of what?

Admiral ROPER. The base pay.

Senator KILGORE. Base pay with fogies?

Admiral ROPER. Yes, sir.

Senator KILGORE. And all allowances?

Admiral DENFELD. Yes, sir.

Senator KILGORE. General, is that the same in the Army?

General PAUL. It is the same in the Army.

Senator KILGORE. In other words, a fellow with 20 years' longevity would get 35 percent above base pay?

Admiral ROPER. An officers' pay is based on the base pay for each grade and with a 5 percent raise in each grade.

Senator MORSE. I have no more questions.

Senator KILGORE. Neither have I.

Senator MORSE. General Paul?

STATEMENT OF LT. GEN. WILLARD S. PAUL, PERSONNEL ADMINISTRATION, DEPARTMENT OF THE ARMY

General PAUL. I have a short statement, Mr. Chairman, but I am perfectly willing to put that in the record and answer questions.

Senator MORSE. We will receive your statement into the record at this time.

(The statement is as follows:)

The Department of the Army favors the enactment of S. 657 in the form set forth in the substitute draft now before you.

The purpose of this legislation is to amend section 3A of the Pay Readjustment Act of 1942, as amended, so that persons paid thereunder will be credited, in the computation of their service, for periods during which they served as cadets at the Military or Coast Guard Academies, or as midshipmen at the Naval Academy, in the Naval Reserve, or as aviation cadets.

Under existing law, virtually all types of military and naval service, whether full-time active duty or in the Reserve or civilian components, may be credited for pay purposes, with the exception of service as cadets or midshipmen, and certain service as aviation cadets in the Naval Reserve.

The amendments to the Pay Readjustment Act contained in the statutes approved December 2, 1942, and September 7, 1944, established or confirmed the policy of recognizing, for pay purposes, all periods during which an individual was serving in active or Reserve status in a component of the armed forces. Under earlier law, the exclusion of cadet and midshipmen service did not result in any marked discrimination, because the categories of service which could be credited were much more limited.

While the advisability of crediting service in the civilian components for pay purposes is, of course, subject to reexamination, it is now well established; and a large number of officers with substantial amounts of such service have recently been integrated in the Regular Army and Air Force under Public Laws 281 and 670 of the Seventy-ninth Congress.

Cadets and midshipmen are members of their respective services, and are at all times on actual active duty. Their training is rigorous, and they are subject to military discipline and control throughout such service. Accordingly, it is believed that service as cadets and midshipmen should be credited for pay purposes; and that the existing denial thereof constitutes an unwarranted discrimination.

Section 2 of the bill would make the proposed change in the Pay Readjustment Act applicable to active-duty pay, and also to the retirement pay of persons heretofore or hereafter separated from the active list; but would prevent crediting of such service for purposes of establishing eligibility for voluntary retirement.

Pay of retired personnel is normally based upon their active-duty pay at the time of retirement, but subsequent amendments are usually made applicable to persons previously retired. I recommend such action in the instant case.

The Department of the Army would not favor crediting cadet and similar service toward establishing eligibility for voluntary retirement, because to do so would in effect reduce those requirements to an undesirable extent.

Section 3 of the bill is designed to make the provisions of the amendment in question applicable to personnel of the Air Force.

Section 4 of the bill provides that the act shall become effective on the first day of the first month following its enactment and that no back pay shall accrue for any period prior thereto. This is designed to facilitate settlement of pay accounts by finance and disbursing officers of the services, and to avoid the possibility of claims for back pay which might otherwise arise by reason of amending the Pay Readjustment Act, which was enacted June 15, 1942.

While I am not able to estimate accurately the cost of the proposed legislation, it is believed that it would increase compensation of Army personnel by approximately 2½ million dollars annually, on the basis of the strength presently authorized.

While it has not been possible to clear the foregoing statement with the Bureau of the Budget, that agency interposed no objection to the submission of the report of the Department of the Army favoring the enactment of this legislation in its original form, which was forwarded to your committee on June 26, 1947.

General PAUL. I am not a graduate of the Military Academy and this does not affect me; however, I was an enlisted man in the National Guard and I am authorized to count that service.

I am not in favor of the bill as written but I am in favor of the substitute bill. The Army does not believe in crediting this service for eligibility for voluntary retirement; that in effect would reduce the length of service from 20 to 16 and from 30 to 26 years. We do not believe we can afford to do that from the personnel or financial angle.

Senator MORSE. Or from the political angle.

General PAUL. Any angle that you want. We do feel that there is a rank discrimination at the moment and that should be ironed out.

There is a pay committee now studying pay under Mr. Forrestal and it is in the hands of four civilians, headed by Mr. Charles Hook of the American Rolling Mill Co., Father Cavanaugh of Notre Dame, Mr. McHugh of the American Telephone & Telegraph, and Mr. Whiting, who is an investment banker and heads the Furniture Mart in Chicago.

They are now going into the full pay structures. However, there is a discrimination between those who have graduated from the Military Academy since 1916 to date and those who have come in, particularly among the integrated officers, of which we have many.

As I told Senator Kilgore, we have less than 10 percent in the Regular Army and less than 10 percent in the Reserve Corps.

Senator MORSE. What is your position in regard to the ROTC?

General PAUL. My position is that any individual who is a member of the Army of the United States, which includes the civilian components, should be able to count his service. A person who is not a member of the Army of the United States should not count that service.

Senator MORSE. These boys could not enlist in the Reserve and take this ROTC at the same time.

General PAUL. If they are interested in protection of this country, I am willing to give them credit, but if not, I am not. Also, there is a great incentive to the Reserve to have it.

Senator KILGORE. You make a distinction between the Army of the United States and the Reserve?

General PAUL. The Army has the Regular Army Reserve components and the National Guard components.

Senator KILGORE. All right.

Senator MORSE. Your position on the ROTC is the same for the 4 years of it, or do you make a distinction as far as the advance students in the last 2 years are concerned?

General PAUL. We have legislation under way now which would restrict the decision to the last 2 years. The Navy has the whole 4 years.

Under my remark there would be the last 2 years, those who were members of the Army of the United States in some component.

Those people are subject to the rules and regulations, are subject to call.

I have had two tours of ROTC, one at the college level. They have 2 hours a week basic and 5 hours in the advanced. Unless they are members of the Naval Enlisted Reserve or Army Reserve, I would say "No."

Senator MORSE. The last two they don't; do they?

General PAUL. No.

The Navy has it in the midshipmen in the Holloway plan.

Senator MORSE. Any questions?

Senator KILGORE. No.

Senator MORSE. My understanding is that you, representing the Army, are willing to say that you would support the substitute bill?

General PAUL. Where it does not count for retroactive pay and not for retirement pay.

Senator KILGORE. General, I would like to ask you something.

There has been a great deal of talk about Army unification—I mean, about the unification of the armed forces.

General PAUL. Yes, sir.

Senator KILGORE. There has been opposition within the armed forces and those favoring the armed forces. Can you see any opposition to unification of administration of pay and procurement procedures? I am talking about procurement procedures.

General PAUL. Procurement of matériel or personnel?

Senator KILGORE. Matériel. I am going to the fiscal features. Do you see any objection to the unification on the straight-out code on that which would apply to our services?

General PAUL. We have a Joint Armed Services Personnel Board.

Senator KILGORE. Talking about personnel. I am talking about procurement of matériel.

General PAUL. Right now in that Board there is a study to unify the system of pay, the use of the forms and all, and of the manner and method of paying. Of course we are all unified in the subject of pay under the pay act in the seven services; that was one of the first points unified.

Senator KILGORE. But we have a lot of conflicting statutes.

General PAUL. But we have this study under way and I think I can speak for the Navy in favor of getting a uniform system of pay for the armed services.

Senator KILGORE. I am thinking about the procurement procedures.

General PAUL. I have not been in the procurement field but I could visualize that it would be a very essential thing to get unified procedures in the procurement field.

Senator KILGORE. They always lead off on the idea that, well, the Army knows what it needs and the Navy knows what it needs. I am not talking about the matériel procured, I am talking about the procedures followed; that was thrown up as a smoke cloud all during this last war; the selection of matériel and the differences and the procurement, there would be a vast saving.

General PAUL. I have never been in procurement but I have a master's degree in organization and management and I have studied it to a vast extent and I certainly think that any methods of procure-

ment can be improved that any of the services are using now and certainly toward a unification end I think it would be helpful.

Senator KILGORE. Fine; thank you.

Senator MORSE. One other question, General.

I would appreciate it if you would have someone on your staff thinking about and preparing for us a series of brief memoranda that I will call rebuttal memoranda to meet the type of arguments that will be made against this bill such as my question: Why not cut them all back? Why not just stop all of this and say as of now none of this time will be allowed in the future toward pay computations.

I am referring to memoranda pointing out what the effect on recruiting and the effect on the caliber of your officer personnel will be if the legislation which you seek is not granted.

General PAUL. I will be glad to have it sent to you, Senator.

Senator MORSE. I will call Admiral Farley, Commandant of the Coast Guard.

STATEMENT OF ADMIRAL J. F. FARLEY, COMMANDANT, UNITED STATES COAST GUARD

Senator MORSE. Admiral, give your full name and title to the reporter.

Admiral FARLEY. Admiral J. F. Farley, Commandant of the Coast Guard.

Mr. Chairman, the bill, S. 657, now under consideration by this committee, has the endorsement of the Treasury Department as indicated by the letter of the Secretary of the Treasury of May 1, 1947.

The history of the development of this legislation has already been traced by other representatives of the armed services and there is little that the Coast Guard as an agency of the Treasury Department in time of peace and as a service of the Navy in time of war can add to the testimony already given.

The pay of Coast Guard personnel is controlled by the Pay Readjustment Act of 1942 as amended, and to all intents and purposes our ranks and pay are parallel to and commensurate with those of the other armed services, particularly with respect to the Navy.

This is not only desirable but necessary in that in time of war Coast Guard officers serve shoulder to shoulder with officers of the Navy and discrepancies in rank for officers of similar service would create difficult situations and raise serious morale problems.

Insofar as the counting of cadet service itself is concerned, the Coast Guard sees no justification for failing to include such service for the purpose of longevity, particularly in view of the fact that the Pay Act of 1942 liberalized the law with respect to those types of military service which can be counted for longevity and pay.

In fact, as has been indicated by previous witnesses, time at our service academies, whether Annapolis, West Point, or the Coast Guard Academy, is practically the only military service now excluded for computational purposes.

Obviously, the number of officers of the Coast Guard who would receive any benefits under the proposed legislation is relatively small in comparison with the other armed services.

There are approximately 710 Academy graduates who do not receive credit for cadet service. The cost to the Government for Coast Guard

purposes if this legislation is enacted would amount to approximately $107,000 per year.

We are also in favor of the changes.

Senator MORSE. That was my question.

Admiral FARLEY. Yes, sir.

Senator KILGORE. Does that substitute bill include the Coast Guard Academy?

Admiral FARLEY. Yes, sir.

Senator KILGORE. No further questions.

Senator MORSE. Thank you very much, Admiral.

Next we have General Evans, representing the Reserve Officers Association.

STATEMENT OF BRIG. GEN. E. A. EVANS, EXECUTIVE DIRECTOR, RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES, WASHINGTON, D. C.

General EVANS. Thank you, Mr. Chairman.

Senator Morse, I have a short statement that I would like to read.

Senator MORSE. We would be glad to hear it.

General EVANS. I am Brig. Gen. E. A. Evans, executive director of the Reserve Officers Association of the United States, whose national headquarters are located at 2517 Connecticut Avenue NW., Washington, D. C.

May I thank the committee for this opportunity to appear before it on the matter of S. 657, a bill to amend section 3 (a) of the Pay Readjustment Act of 1942.

I would like to discuss separately the two amendments to this act as proposed in this bill.

The first amendment appears on lines 3 and 4, page 2, of the bill where the words, "as cadet, as midshipman, as aviation or flying cadet" are added to the types of services that may be considered for longevity pay purposes.

The Reserve Officers Association is not convinced that such addition to the law is required or even necessary. However, if the committee is of the opinion that such an addition is desirable, then I suggest that consideration be given to the equivalent service that is rendered by the young man who comes into the service through the ROTC. In the case of the cadet, midshipman, and aviation or flying cadet, his education and maintenance is paid for by the Government while he is undergoing this training for a commission. On the other hand, the ROTC graduate pays for his own education and maintenance during his college years.

It is grossly inequitable that the young man who receives his education at the expense of the Government should receive longevity pay for this period in discrimination against the graduate of ROTC who receives a commission in the Regular service.

These same observations apply equally to section 2 as this section appears on lines 8 to 18, page 3, of the bill.

In addition to those observations may I suggest for the consideration of the committee that by including the period of time when an officer held an appointment as a cadet or a midshipman it is possible that the service to the Government of a graduate might be limited to a period of 11 years.

For example, the act of July 1935 (49 Stat. 507); act of June 13, 1940 (54 Stat. 380) section 971 (b), title 10, United States Code, provides, among other things, as follows:

> That whenever any officer on the active list of the Regular Army or Philippine Scouts shall have completed not less than fifteen nor more than twenty-nine years' service, he may upon his own application be retired, in the discretion of the Secretary of War, with annual pay equal to 2½ per centum of his active duty annual pay at the time of his retirement, multiplied by a number equal to the years of his active service not in excess of twenty-nine years—

and so forth.

With this provision of the law in mind it is plain to see that with the enactment of section 2, it will be possible for an officer to retire after 11 years' commissioned service. Such a provision is obviously uneconomical as to the services received by the Government in return for the cost of educating the officer.

For the reason the Reserve Officers Association feels that it must express its opposition to the latter provision.

Senator MORSE. General, you have read the proposed substitute bill?

General EVANS. I have.

Senator MORSE. If I understand you correctly, except for its failure to provide for the ROTC, you have no strenuous objections?

General EVANS. No; I do not, Senator Morse. But certainly if you are going to include the graduates from West Point and Annapolis you then are causing a discrimination against those who come into the service from ROTC.

I quite agree with you that there certainly should be an equalizing of this thing.

Incidentally, our association is very much concerned with the thought that you expressed here a few moments ago in reference to this piecemeal legislation; that is why we say that we are not necessarily convinced that the whole bill should even be brought up at this time. It may be a rather dangerous thing because it might lay the grounds for a possible elimination of benefits which now exist and we feel rather keenly that there is a need for the present requirements, the present emoluments, as it applies to the Reserve because we have to give these people in the Reserve every bit of incentive we can to stay in the Reserve for a long period of time.

Senator MORSE. After all it is the Reserve to a very large measure that keeps our whole Military Establishment close to the civilian.

General EVANS. That is correct.

Anything that would endanger the present laws, that would give credit for longevity purposes for the Reserves and National Guard, I am a little fearful of it.

Senator MORSE. I think we can prevent, speaking only for myself, legislation passing in this session that will take advantages away. Our real problem as to whether we can equalize some of these things is what we have before us so that the advantages will be free of discriminations that exist. But on this ROTC matter—that concerns me a little bit.

What do you say to the argument that there is nothing that stops these boys in the ROTC if they want to get the advantage of the time that they serve from enlisting in the Reserve Army?

General EVANS. Well, that is true for the future, but let us look at the situation today.

General Paul's only statement was that about 25 percent of the Regular officers were graduates from West Point. I think his statement was that about 10 percent—no, I do not recall what that figure was.

Senator KILGORE. His further statement was that less than 25 percent were from the Academy and that 75 percent of the remainder of those other than Academy came from ROTC units or rather from colleges and so forth and the others came from enlisted personnel.

General EVANS. I am thinking about those.

Senator KILGORE. I just wanted to correct you.

General EVANS. Yes.

Let us think about those people. They came in from ROTC not knowing that if they came in from ROTC they might have received this longevity advantage. What are we going to do with them?

I think I thoroughly agree that there should be an across-the-board equalization of this thing. I have no objection to including the West Point cadet and the Annapolis man but I certainly do not think that he should have an edge on this thing, we will say, over four out of five officers who come into service not from West Point or Annapolis.

The thing you are talking about would take care of the future and I am thinking of the tens of thousands now in the service.

Senator MORSE. That came in via the ROTC?

General EVANS. That is right and were probably not members of the Enlisted Reserve and had no reason to be members.

Senator MORSE. As you say, they took a course of training which apparently qualified them for the same commission that the boy coming out of the two Academies received.

General EVANS. That is quite correct. There is certainly no reason why they should not be entitled to it just as much as the man at West Point and Annapolis.

Senator MORSE. Any further questions?

Senator KILGORE. No. I would like to get something straightened out in the record.

Some statement was made about credit for service in the Philippine Scouts or Philippine Constabulary; that credit only would apply to those who were in prior to the Philippine end.

There is no law that would allow a member of the Philippine Constabulary if it was continued and if it was allowed as a component of the Army.

Colonel LANCEFIELD. I cannot say as to the present state of the Philippine Constabulary, Senator. It is my present understanding that it is taken over and reorganized by the Philippine Government.

Senator KILGORE. It was completely wrecked on the capture of the Philippines and nobody served in it after the war, after the fall of Corregidor, and now it would be in connection with the present government there and has nothing to do with our longevity difficulty.

Colonel LANCEFIELD. As to the Philippine Scouts, that is the part of the Regular Army.

Senator KILGORE. Was a part.

Colonel LANCEFIELD. Public Law 72 and 190 authorized recruiting of the Philippine Scouts up to a strength of 50,000 to defray and meet in part our occupational requirements in the Far East. We recruited a considerable number of those men.

Senator KILGORE. And are still a component of the Army?

Colonel LANCEFIELD. There are some who are still in. The future status of the Philippine Scouts is very much in doubt. The last I heard we had 5,000 but they are still there.

Some of them were used in Formosa and some were used in the Philippines and some in Japan. There was one regiment that went up into Hanshu.

Senator MORSE. Thank you very much, General.

The last statement will be from Admiral Hamlet, representing the Retired Officers Association.

STATEMENT OF VICE ADM. H. G. HAMLET, UNITED STATES NAVY, PRESIDENT, RETIRED OFFICERS ASSOCIATION, ACCOMPANIED BY CAPT. F. O. WILLENBUCHER, UNITED STATES NAVY,, EXECUTIVE VICE PRESIDENT AND LEGAL COUNSEL, RETIRED OFFICERS ASSOCIATION, WASHINGTON, D. C.

Admiral HAMLET. I have with me, Mr. Chairman, the executive vice president and legal counsel of the Retired Officers Association who has prepared the brief on this matter and with your permission he will speak with me.

Captain WILLENBUCHER. This subject has been covered very elaborately and I should like to file this brief and make it a part of the record.

Senator MORSE. That will be satisfactory.

Captain WILLENBUCHER. The brief attempts in half an hour to cover 150 years of history on the subject.

I would like first to say that we in the association favor the substitute bill.

I

I am Capt. F. O. Willenbucher, United States Navy, retired. I am executive vice president and legal counsel of the Retired Officers Association, composed of retired commissioned officers, warrant officers, and nurses, Regular and Reserve, of the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service.

I appear on behalf of those of our members, retired officers, who are not now authorized by law to credit for the service they performed as cadets in the Army or Coast Guard or as midshipmen in the Navy or as aviation cadets in the Army, Navy, and Marine Corps for pay, longevity, and retirement purposes.

Our association welcomes this opportunity and I wish at the outset, Mr. Chairman, to thank you for having permitted us to appear.

Services performed as cadets or as midshipmen at the service academies may not now be counted, either for pay and longevity or for retirement purposes, by those who served in those capacities, subsequent to the effectiveness of the Army Appropriation Act of August 24, 1912, and the Naval Appropriations Act of May 4, 1913, although all such service is full-time active military service.

Whether services performed as aviation cadets may now be counted, differs as between the Army, Navy, and Marine Corps. Aviation cadets in the Army are, and have been, enlisted men in the Regular Army. While serving as aviation cadets they are prohibited by law

from increase in pay for longevity, although they perform full-time active duty in hazardous flight training.

Army officers, Regular or Reserve, who have performed duty as Army aviation cadets may count such service for pay and longevity purposes, but not for retirement purposes under the present law.

Aviation cadets in the Navy and Marine Corps have been of two classifications, (1) appointed aviation cadets, a former classification since abolished, who were neither officers nor enlisted men and (2) enlisted aviation cadets.

Former appointed aviation cadets could not count their service for longevity purposes while they served in that capacity and enlisted aviation cadets may not now count their service for longevity purposes while serving in such capacity, although their service is and has been full-time active duty in hazardous flight training.

Officers who have performed service as aviation cadets in the Navy or Marine Corps may count such service for longevity-pay purposes in certain cases, but in other cases they may not.

A Reserve officer who served on active duty before he became an officer, either in the capacity of an appointed or as an enlisted aviation cadet, may count such aviation-cadet service for longevity-pay purposes. A Regular officer, however, may count service performed as an enlisted aviation cadet in the Navy or Marine Corps for longevity-pay purposes, but he may count service performed as an appointed aviation cadet, only if he became an officer under the provisions of the Naval Aviation Personnel Act of 1940, but he may not count such service if he became a regular commissioned officer under any other law.

Neither Regular nor Reserve officers may count service performed as aviation cadets in the Navy or Marine Corps for retirement purposes.

In presenting these views, and in urging the enactment of appropriate remedial legislation, the Retired Officers Association wishes to bring to the attention of the Congress that—

(*a*) Service as a cadet, midshipman, or aviation cadet is full-time active military service and those who render such service to the Government are now, and always have been, recognized by legislation and by administrative and judicial determination as constituent parts of the military services.

(*b*) Those who served or were serving as cadets or midshipmen prior to 1913 are now entitled to credit such service for pay, longevity, and retirement purposes under existing law. The Army Appropriation Act of August 24, 1912 (37 Stat. L. 594) and the Naval Appropriation Act of March 4, 1913 (37 Stat. L. 891) disallowed credit for service as a cadet and midshipman to those whose service as such commenced subsequent to 1912.

This action of Congress, in the light of present day concepts and the subsequent action by Congress in crediting service for pay, longevity, and retirement purposes to others, has resulted in a discrimination against those who may not now credit their service as a cadet, midshipman, or aviation cadet.

(*c*) That, on the basis of comparison with other full-time active military service and, even more important, in comparison with inactive service in the Reserve components of the armed services, credit for which Congress has seen fit to extend by law, Congress should now

authorize credit for service as a cadet, midshipman, and aviation cadet for pay, longevity, and retirement purposes.

II

Service as a cadet, midshipman, or aviation cadet is full-time active military service and those who rendered such service to the Government are now, and always have been, recognized by legislation and administrative and judicial determination as constituent parts of the military services.

(A) CADET SERVICE IN THE ARMY

Cadets who serve at the United States Military Academy are in the Regular Army of the United States.

Title 10 United States Code, section 4, declares:

> The Regular Army of the United States shall consist of the Infantry, the Cavalry * * *; the General Staff; * * * cadets of the United States Military Academy * * * and such other officers and enlisted men as are now or may hereafter be provided for.

Cadets are appointed by the President (10 U. S. C. 1091) and, upon appointment, each is issued a cadet warrant and takes an oath to support the Constitution of the United States and to obey the legal orders of his superior officers and the rules and articles governing the Armies of the United States (10 U. S. C. 1099).

They engage to serve for 8 years unless sooner discharged (10 U. S. C. 1101) and are subject at all times to do duty in such places and on such service as the President may direct (10 U. S. C. 1102).

Cadets constitute a part of the land forces of the United States and as such are subject to the rules and Articles of War (10 U. S. C. 1091; 5 Op. Atty. Gen. 323). They are organized into companies, each of which is commanded by an officer of the Army (10 U. S. C. 1105); their pay and allowances are fixed by statute (37 U. S. C., Supp. V., 117) and paid from an appropriation under the Military Establishment (Military Appropriation Act, 1947, Public Law 515, approved July 16, 1946). They are amenable to military discipline as provided in the Articles of War and are specifically included among those persons "subject to military law" in 10 United States Code 1473.

Cadets are listed in the Army Regulations as a grade of rank in the Army of the United States between "warrant officers (junior grade) or flight officer" and "aviation cadet" (AR 600–15).

Service as a cadet on or after December 7, 1941, and before the termination of hostilities incident to World War II, is considered active military service in World War II for the purposes of laws administered by the Veterans' Administration (38 U. S. C., Supp. V., 730). Those who served as cadets during the periods of World War I and World War II were awarded such decorations and service medals as their service merited as members of the Regular Army.

During both World War I and World War II many cadets were graduated earlier than they would otherwise have been graduated in order to make them available for combat duty.

During World War II many of the cadets served at places away from West Point on Army stations, on Army maneuvers, and in aviation training at Army Force training command bases. Thus it is

clear that cadets are in all respects both by legislation and in practice a constituent part of the Regular Army.

An examination of the earlier legislation of Congress shows that the cadets of the Army have at all times been a part of the Army and that service as a cadet has always been actual service in the Army.

Cadets are first mentioned in the act of May 9, 1794 (1 Stat. L. 366) which, among other things, provided for 32 cadets "ranking as sergeants, but spoken of as officers."

They were part of the Army. By section 6 of the act of July 16, 1798 (1 Stat. L. 605), cadets were called noncommissioned officers in the Army, and their pay was fixed at $10 per month plus two rations per day.

By the act of March 16, 1802, entitled "An act fixing the military peace establishment of the United States" (2 Stat. L. 132), it was provided (sec. 1) that the military peace establishment of the United States should embrace a regiment of artillerists, of which a part should be 40 cadets. Their pay and rations were fixed by sections 4 and 5.

By section 26 a Corps of Engineers, consisting of officers and 10 cadets, was authorized; and by section 27, the corps was stationed at West Point, N. Y., to constitute a Military Academy. The officers and cadets were to be subject, at all times, to do duty in such places and on such service as the President should direct.

Clearly all of these cadets were a part of the Army and throughout the military history of the United States the status of cadets has not changed. They were so recognized by the act of April 12, 1808 (2 Stat. L. 481), in section 5 of which they were declared, with the then-existing cadets, to be subject to the rules and articles of war.

The act of April 29, 1812 (2 Stat. L. 720), fixed the number of cadets at not to exceed 250, authorized the President to attach them to the Military Academy, and declared—

> That they shall be arranged in companies of noncommissioned officers and privates, according to the directions of the Commandant of Engineers and be officered from the said Corps, for the purpose of military instruction; * * * and that the said Corps shall be trained and taught all the duties of a private, noncommissioned officer, and officer; be encamped at least three months of each year, and taught all the duties incident to a regular camp: and that the candidates for cadets be not under the age of fourteen nor above the age of twenty-one years, that each cadet * * * shall sign articles * * * by which he shall engage to serve for five years unless sooner discharged; and all such cadets shall receive pay and emoluments now allowed by law, to cadets in the Corps of Engineers.

This was the original organization of the United States Military Academy substantially as it has continued.

By the act of March 3, 1815 (3 Stat. L., 224), cadets were again recognized by law as "subject to the rules and articles of war." By section 28 of the act of July 5, 1838 (5 Stat. L., 260), it was enacted:

> The term for which cadets, hereafter admitted into the Military Academy at West Point, shall engage to serve, be and the same is hereby increased to eight years, unless sooner discharged.

By section 1 of the act of July 28, 1866 (14 Stat. L. 232), the Corps of Cadets was declared to be a constituent part of the Army of the United States. This enactment remained in force, was reproduced in section 1094 of the Revised Statutes, and is now contained in title 10, United States Code, section 4 which states that "the Regular

Army of the United States shall consist of, "with other constituents, "cadets of the United States Military Academy."

This status of cadets, as a constituent part of the Regular Army of the United States, has been recognized both by administrative and judicial determination.

In the case of the *United States* v. *Morton* (112 U. S. 1, 28 L. ed 613, 5 Sup. Ct. Rep. 1), decided October 27, 1884, it was held that the time of service of a cadet in the Military Academy at West Point from July 1, 1865, to June 15, 1869, was to be regarded as actual time of service in the Army within the meaning of the acts of February 24, 1861, and June 30, 1882 (21 Stat. L. 346, 22 Stat. at L. 118), in computing his increase of pay for each term of 5 years of service under section 1262 of the Revised Statutes.

Charles Morton had been appointed a conditional cadet in the service of the United States on March 6, 1865. He was so admitted on July 1, 1865, and received his warrant stating that he had been appointed by the President a cadet in the United States Military Academy to rank from July 1, 1865. On that date he entered into an agreement, as required by law, that "Having been selected for an appointment as a cadet in the Military Academy of the United States" he engaged that he would serve in the Army of the United States for 8 years unless sooner discharged.

He took the oath provided by the act of July 2, 1862 (12 Stat. L. 502), which required of every person "Elected or appointed to any office of honor or profit under the Government of the United States * * * before entering upon the duties of such office * * * that I will well and faithfully discharge the duties on which I am about to enter."

On June 15, 1869, he was duly graduated and commissioned a second lieutenant. He served continuously in the service of the United States in a military capacity from July 1, 1865, to March 31, 1883, when he had achieved the rank of first lieutenant. In computing his service pay he was not allowed credit for the time he was a cadet at West Point as a part of his time of service in the Army.

He brought suit in the Court of Claims against the United States for back pay on this basis, withheld from him between February 24, 1881, and March 31, 1883, on these facts and the judgment in his favor was sustained by the Supreme Court.

The sole basis of his claim rested upon the contention that section 1262 of the Revised Statutes which provided that—

> there shall be allowed and paid to each commissioned officer below the rank of brigadier general * * * ten per centum of their current yearly pay for each term of five years service—

applied to his service as cadet at the Military Academy at West Point. This had been denied him by the accounting officers who contended that only his service as a commissioned officer should be credited. The only question presented was whether service as a cadet was to be regarded as actual time of service in the Army.

After reviewing all of the existing statutes involved the Supreme Court held that the Corps of Cadets of the Military Academy was a part of the Army of the United States, and a person serving as a cadet was serving in the Army and, that—

> the time during which plaintiff * * * was serving as a cadet, was, therefore, actual time of service by him in the Army.

In reaching this conclusion, the Supreme Court said, inter alia:

> But an examination of the legislation of Congress shows that the cadets at West Point were always a part of the Army and that service as a cadet was always actual service in the Army * * *.
>
> From this review of the statutes, it cannot be doubted that, before the passage of the act of July 28, 1866, as well as afterward, the Corps of Cadets of the Military Academy was a part of the Army of the United States and a person serving as a cadet was serving in the Army; and, that the time during which the plaintiff in the present case was serving as a cadet, was, therefore, actual time of service by him in the Army.

In the case of the *United States* v. *Watson* (130 U. S. 80, 32 L. ed. 852, 9 Sup. Ct. Rep. 430), decided March 11, 1889, it was likewise decided that the time of the service as a cadet in the Military Academy at West Point is to be regarded as a part of the time he served in the Army, within the meaning of the act of July 5, 1838, and should be counted in computing his longevity pay under that act.

Watson entered the United States Military Academy as a cadet, July 1, 1856; was appointed a second lieutenant of cavalry, May 6, 1861; first lieutenant of artillery, May 14, 1861; captain, March 9, 1866; retired from active service for loss of his right leg from wound received in line of duty, September 18, 1868.

In computing his service for longevity pay he claimed to be entitled to count his time as a cadet under the acts of July 5, 1838 (5 Stat. L. 256); March 2, 1867 (sec. 9, 14 Stat. L. 423); July 15, 1870 (R. S. 1262).

The ground upon which this claim rested was that the time of the service of claimant as a cadet in the Military Academy at West Point was to be regarded as a part of the time he served in the Army within the meaning of the act of July 5, 1838, and should be counted in computing his longevity pay under that act.

The provisions of the acts of Congress, relied upon as the foundation of Watson's claim, were as follows:

Section 15, act of July 5, 1838:

> Every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States: *Provided*, That in certain cases where officers are entitled to and receive double rations, the additional one allowed in this section shall not be included in the number to be doubled.

Section 9, act of March 2, 1867:

> That section 15 of the "act to increase the present military establishment of the United States, and for other purposes," approved July 5, 1838, be amended so that general officers shall not hereafter be excluded from receiving the additional ration for every five years' service; and it is hereby further provided that officers on the retired list of the Army shall have the same allowance of additional rations for every five years' service as officers in active service.

Act of July 15, 1870, now section 1262, Revised Statutes:

> There shall be allowed and paid to each commissioned officer below the rank of brigadier general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service.

Said the Supreme Court:

> That cadets at West Point were always part of the Army, and that service as a cadet was always actual service in the Army has been settled by the decision of this court in the case of *United States* v. *Morton* (112 U. S. 1 (28:613)) in which a question almost identical with the one now before us was presented for consideration.

In that case, Morton, the claimant, had entered the United States Military Academy at West Point as a cadet, July 1, 1865, had graduated therefrom June 15, 1869, and had served in the Army as a commissioned officer from that date until March 31, 1883.

In computing his service pay the accounting officers did not allow him credit for the time he had been a cadet at West Point as a part of his time of service in the Army and he accordingly brought suit in the Court of Claims * * *. These acts, among other things, provided for "additional pay to officers for length of service, to be paid with their current monthly pay, and the actual time of service in the Army or Navy, or both, shall be allowed all officers in computing their pay." The Court of Claims rendered judgment in favor of the claimant, which, on an appeal prosecuted on behalf of the United States, was approved by this Court.

After quoting from the decision in the Morton case, the Court said:

More direct and emphatic language could not be used to support the contention of the claimant in this case. The words "actual time of service in the Army," as used in the act of February 24, 1881, are not more expressive of cadet service at West Point, than are the words "for every five years he may have served or shall serve in the Army of the United States" as used in the act of July 5, 1838. They both mean the same kind of service; and we are of the opinion that such service should be reckoned in computing longevity pay prior, as well as subsequent, to the act of February 24, 1881.

On May 8, 1889, Comptroller General Butler rendered an opinion that Gen. Ulysses S. Grant was entitled to credit for longevity for his service as a cadet at the Military Academy under the act of March 2, 1867, which fixed the salaries of officers and substituted percentage increased for each period of 5 years' service, in lieu of rations allowed under former laws, and under the act of June 18, 1878 (20 Stat. L. 150, sec. 7), which provided that all officers who had served in the War Between the States or as enlisted men should be credited with full time in computing service for longevity pay.

This action reversed a former opinion of Comptroller General Bowman in 1838 which denied the crediting of rations for service as a cadet under section 15 of the act of July 5, 1938 (15 Stat. L. 258).

Again on May 18, 1908, the Assistant Comptroller of the Treasury reaffirmed the Butler decision that service as a cadet should be credited for pay and longevity purposes under the then existing law thereby likewise reversing a decision of Comptroller General Gilkenson that such service could not be credited under the act of July 5, 1938.

It is thus clear that cadets are now, and always have been, a constituent part of the Regular Army.

(B) SERVICE AS A MIDSHIPMAN IN THE NAVY

Midshipmen are in the naval service (34 U. S. C. 1031). They are appointed by the President, and, upon appointnemt each is issued a warrant which makes him a "midshipman in the Navy."

As such, each takes an oath to support and defend the Constitution of the United States and faithfully to discharge the duties of a midshipman in the Navy. They are subject, at all times, to perform duty wherever they may be ordered and frequently and customarily serve at sea.

During World War I midshipmen were serving in the U. S. S. *San Diego* when she was sunk by a mine during that war. Again during World War II midshipmen served in naval ships of the Atlantic Fleet.

Midshipmen are fully amenable to military discipline, are subject to the Articles for the Government of the Navy and may be tried by

general courts martial (34 U. S. C. 1061). They are eligible for decorations and awards and those who served in World War I were awarded the Victory Medal with the Atlantic Clasp. Those who served in World War II were awarded the Victory Medal for World War II.

During both World War I and World War II, midshipmen were graduated after only 3 years at the Naval Academy, 1 year sooner than they would otherwise have been, to provide commissioned officers for combat duty.

That midshipmen have always been recognized as a constituent part of the Regular Navy both by administrative and judicial determination is clear. A few examples will suffice.

In 25 Opinions of the Attorney General 579 it was stated that—

> It is not to be doubted that a midshipman is an officer, and this has been authoritatively decided respecting undergraduates at the Naval Academy under laws for the benefit of "officers of the Navy."

In the case of the *United States* v. *Baker* (125 U. S. 645, 31 L. Ed. 824), decided April 16, 1888, it was held that a midshipman at the Naval Academy was serving as an officer in the Navy within the meaning of the act of 1883 (ch. 97, 22 Stat. L. 473).

Baker was appointed a midshipman in the Navy on September 30, 1867, by an appointment which stated that he was "appointed in the grade of midshipman in the United States Navy." By the act of July 15, 1870, it was provided that "the students in the Naval Academy shall hereafter be styled cadet midshipmen."

The single question involved was whether Baker, while a midshipman, was serving as an officer or enlisted man in the Navy, within the meaning of the act of 1883.

In affirming the judgment in the Court of Claims that he was serving as an officer, the Supreme Court said:

> It is impossible not to conclude that the claimant continued to be, after the passage of the act of 1870, as he was prior to its passage, an officer of the Navy, on the active list, and serving as such an officer by virtue of his having been appointed a midshipman and continuing to be a student at the Naval Academy, even though he might have been properly styled, after the passage of the act of 1870, a cadet midshipman.

In the case of the *United States* v. *Cook* (128 U. S. 254, 28 L. Ed. 464), decided November 19, 1888, it was held that a cadet midshipman at the Naval Academy, appointed June 6, 1873, who graduated at the Naval Academy June 18, 1879, and was appointed ensign November 15, 1881, was entitled to additional pay under the act of March 3, 1883 (ch. 97, 22 Stat. L. 473), and that a midshipman was considered an officer.

This was an appeal from a judgment rendered by the Court of Claims against the United States in favor of Cook for the sum of $1,000. Cook was appointed a cadet midshipman in the Navy, June 6, 1873, graduated at the Naval Academy June 18, 1879, and was appointed ensign November 15, 1881. He claimed additional pay under the act of March 3, 1883, which read as follows:

> And all officers of the Navy shall be credited with the actual time served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service, in all Respects, in the same manner as if all said service had been continuous, and in the Regular Navy, in the lowest grade having graduated pay held by such officer since last entering the service.

In deciding that the claimant was entitled to credit his service as a cadet midshipman, the court said:

That a midshipman is an officer has been understood ever since there was a Navy * * *. His name indicated a middle position between that of a superior officer and that of a * * * seaman * * *. The first Act of Congress under the Constitution establishing a Navy, after naming the superior officers to be employed on each ship, designates the following "warrant officers" to be appointed by the President, namely:

One sailing master, one boatswain, one gunner, one sailmaker, one carpenter, and eight midshipmen and these are placed before "petty officers" mentioned in the same connection (Act of March 27, 1794, 1 Stat. L. 350).

If the law designates a cadet as a midshipman, the designation is an official one. The qualification of a cadet midshipman is used for the sake of distinction, to distinguish one kind of midshipman from another, a midshipman at school from a midshipman aboard ship.

In the opinion of the Comptroller General No. A–11546 of December 15, 1925, it was stated that:

Claimant was thus discharged from the naval service July 30, 1919, as an enlisted marine. His entry into the Naval Academy the next day as a midshipman was a continuation in the naval service but in a different capacity (*United States* v. *Baker*, 125 U. S. 646; *United States* v. *Cook*, 128 U. S. 254, 26 Comp. Dec. 236; 419).

In the opinion of the Comptroller General No. B–61946 of December 2, 1946, it was stated that:

It is well settled that a midshipman at the Naval Academy is a member of the Navy and, subject to the conditions of the act of March 4, 1913, and decisions which have construed that act, service as a midshipman at the Academy is "active service in the Navy."

The act of Congress approved July 13, 1943 (Public Law 144, 78th Cong.), provided in part as follows:

SEC. 10. Service as a cadet at the United States Military Academy or as a midshipman at the United States Naval Academy or as a cadet at the United States Coast Guard Academy on or after December 7, 1941, and before termination of hostilities incident to the present War as determined by proclamation of the President or by concurrent resolution of the Congress shall be considered active military or naval service in World War II for the purposes of law administered by the Veterans' Administration.

Navy Department file No. 5252—137:4, June 6, 1921, which is still fully effective, states that:

An individual appointed to the Naval Academy pursuant to law is on active duty at the Academy as a midshipman and not as a commissioned officer or an enlisted man detailed to some specific duty in connection with the administration of the Academy. While the courts have pointed out certain distinctions between enlisted men, midshipmen, and commissioned officers, all decisions are to the effect that they are all members of the naval service and therefore midshipmen while actually in attendance at the Academy are on active duty in the same degree as enlisted men or commissioned officers detailed to the Academy for the performance of specific duty.

It is thus clear that midshipmen are now, and always have been, a constituent part of the Navy.

(C) CADET SERVICE IN THE COAST GUARD

Coast Guard cadets are in the regular Coast Guard.

Title 14, United States Code, section 5, states that:

In the Coast Guard, there shall be a commandant, captains, commanders, * * * cadets, * * *, warrant officers, petty officers and other enlisted men, * * *.

Title 14, United States Code, section 1, states that:

> The Coast Guard which shall be a military service and constitute a branch of the land and naval forces of the United States at all times shall operate * * * as a part of the Navy, in time of war or when the President shall direct.

Coast Guard cadets are appointed by the Secretary of the Treasury and, upon appointment, are issued cadet warrants which make them part of the Coast Guard. As such, each takes an oath to support and defend the Constitution of the United States and faithfully to discharge the duties of a cadet.

Coast Guard cadets are required to obligate themselves to serve in the Coast Guard as officers for 3 years after graduation (14 U. S. C. 15). They are subject at all times to do duty wherever they may be ordered, serve at sea, are amenable to military discipline and are eligible, for their service as cadets, to decorations and awards.

Coast Guard cadets were awarded the Victory Medal for their service in World War I. Others received the Victory Medal for their service in World War II.

During World War I, Coast Guard cadets manned the Coast Guard cutter *Onandaga* on operational as well as training assignments. In April or May, 1918, Coast Guard cadets of the first class under the command of then Capt. F. C. Billard, escorted a convoy of Canadian-built trawlers from a St. Lawrence port to Boston, an operational assignment in the war area infested with enemy submarines.

There probably were other such operational assignments during World War I in which Coast Guard cadets participated.

In World War II Coast Guard cadets served on active duty at sea in Coast Guard ships. Coast Guard cadets were serving in Coast Guard cutter *Cobb* in 1944 in the Atlantic and the Gulf of Mexico. These waters were frequented by German submarines.

On September 4, 1944, the *Cobb* contacted a submarine and dropped seven depth charges. Later reports confirm a submarine in that area.

Coast Guard cadets, like cadets at the Military Academy and midshipmen at the Naval Academy, were graduated earlier than the prescribed course of instruction at the Coast Guard Academy both during World War I and World War II in order to provide commissioned officers for combat duty.

It is clear that, like cadets at the Military Academy and midshipmen at the Naval Academy, Coast Guard cadets are a constituent part of the armed forces of the United States.

(D) SERVICE AS AN AVIATION CADET

1. Army: Army aviation cadets are enlisted in the Air Corps of the Regular Army. Title 10, United States Code, section 297a, states that—

> The grade of aviation cadet is hereby created as a special and separate enlisted grade in the Air Corps, Regular Army * * *.

They serve on active duty in training (10 U. S. C. 296a).

Upon enlistment each aviation cadet must agree to accept a commission as second lieutenant, Air Corps Reserve, upon the completion of his training and instruction and that he will serve as such for a continuous period of 3 years (10 U. S. C. 299).

While serving as aviation cadets they are not now entitled to longevity pay (10 U. S. C. 304). They are, like other enlisted men of the Army, subject to do duty wherever they may be sent, are fully amenable to military discipline, and are eligible for decorations and medals.

2. Navy: Naval aviation cadets are members of the Naval Reserve and the Marine Corps Reserve. Title 34, United States Code, section 850a, states that—

> There shall be in the Naval Reserve and Marine Corps Reserve the special enlisted grade of aviation cadet.

They perform active duty in the Navy, not to exceed 4 years (34 U. S. C. 850b). While so serving they are not now entitled to additional pay for longevity (34 U. S. C. 850c). They are at all times subject to do duty whever they may be ordered, are fully amenable to naval discipline, and are eligible for decorations and awards.

It is thus clear that service as an aviation cadet, both in the Army and in the Navy, is full-time active duty as an enlisted man, and that their status as a constituent part of the military services in which they perform duty is no different than that of other enlisted men who are in a full-time active-duty status.

III

Those who served or were serving as cadets or midshipmen prior to 1913 are now entitled to credit the time of such service for pay, longevity, and retirement purposes under existing law.

The Army Appropriations Act of August 24, 1912 (37 Stat. L. 594) and the Naval Appropriation Act of March 4, 1913 (Stat. L. 891), disallowed credit for service as a cadet and midshipman to those whose service as such commenced subsequent to 1912. This action of Congress, in the light of present-day concepts and the subsequent action by Congress in crediting service for pay, longevity, and retirement purposes to others, has resulted in a discrimination against those who may not now credit their service as a cadet, midshipman, or aviation cadet.

Section 6 of the Army Appropriation Act of August 24, 1912 (37 Stat. L. 594), provides:

> That hereafter the service as a cadet who may hereafter be appointed to the United States Military Academy, or to the Naval Academy, shall not be counted in computing for any purpose the length of service of any officer in the Army.

The Naval Appropriation Act of March 4, 1913 (37 Stat. L. 891), provides:

> Hereafter the service of a midshipman at the United Sttaes Naval Academy, or that of a cadet at the United States Military Academy, who may hereafter be appointed to the United States Naval Academy, or the United States Military Academy, shall not be counted in computing for any purpose the length of service of any officer in the Navy or the Marine Corps.

Paragraph 504 of the Coast Guard Regulations of 1916 provided:

> In computing longevity pay all service in the Coast Guard, Revenue-Cutter Service, Life Saving Service, Army, Navy, and Marine Corps shall be included except service as a cadet or cadet engineer subsequent to August 24, 1912.

Thus by the acts of Congress, just quoted, service as a cadet in the Army or Coast Guard and service as a midshipman in the Navy has been denied to those who have so served, if their service as such

commenced subsequent to the classes which entered the Academies during 1912. It has been shown, under section II of this statement, that, under former laws as administratively and judicially construed by the Supreme Court, such service was credited for pay, longevity, and retirement purposes.

The practical effect of these laws was to take away the right to count the service from those who followed their enactment and to preserve the rights to those to whom such rights had theretofore accrued. Congress was dealing with a matter of policy and not with vested rights. It was quite within its competence to establish the new policy for the future. A study of the legislative history of these laws and subsequent acts of Congress which deal with the crediting of service, active and inactive, for pay, longevity, and retirement purposes discloses that, however compelled the reasons which persuaded the adoption of that policy may then have been, neither the reasons nor present-day concepts support its maintenance.

One of the principal reasons which influenced Congress to take away the right to count the service was the prevalence of numerous private claims brought about by conflicting decisions of the Comptroller General which had proved to be a burden to Congress. These claims related to service performed prior to the turn of the century. If any such claims have not long since been settled, the claimants are now dead and the crediting of the service at this time would not, in any case, revive them.

A second reason, vigorously advanced at that time, and heard in some quarters now, was that the education at the Academies is at the expense of the Government and hence is free to the individual. It is true that those who serve as cadets and midshipmen do not pay for the education they receive. It is, however, by no means free.

They, like the commissioned officers, warrant officers, and enlisted men, devote all of their efforts and all of their time to the profession of arms. They are at all times subject to the most rigorous discipline and training known to the military profession in the United States. They are without freedom to choose what they are to study, but instead must diligently apply themselves to courses of training prescribed by the Government for the benefit of the Government to equip them for the emergency of war.

It could well be argued that, far from equipping them to meet the demands of commercial enterprise, the education they receive would be of little benefit to them other than to be applied in their subsequent military service.

Commissioned officers, warrant officers, cadets, midshipmen, and enlisted men are all constantly in training throughout their military careers. It is only when war comes that what they have learned is put to use in the defense of the country. Enlisted men are trained at training centers and in trade schools maintained by the Government.

Commissioned officers and warrant officers are educated in schools and colleges maintained by the Government and in private universities and colleges at the expense of the Government. They are paid while they experience this training and their service is counted while they are thus being educated for the benefit of the Government. A typical example might be considered.

X ——— enlisted in the Navy in April 1920; attended Seaman Signalman's School 1920; attended Naval Academy preparatory

class 1921; served as a midshipman 1921 to 1925; served as an officer at sea until 1930; attended Naval Post Graduate School, United States Naval Academy, Annapolis, Md., in 1930 and 1931 as an officer; and attended Carnegie Institute of Technology in 1931 and 1932 as an officer at the expense of the Government.

His service as an enlisted man in training and as an officer, included the time in attendance at the Post Graduate School and Carnegie Institute of Technology is all counted, but his service as a midshipman, fully as meritorious and necessary to his military development, is now not counted. Why?

All of his education was put in his way without payment in money by him, but is far from free for there are things more valuable than money which one can give. In this case it is service to his country, than which nothing is of greater value, especially at this time.

Most cadets and midshipmen enter the Academies for the sole purpose of becoming officers in the military service and with the intention of devoting their lives to their chosen profession. When they do so they sacrifice all opportunity of following other vocations unless they later resign or are discharged from the service.

As time progresses and as they advance into the higher grades their opportunity of meeting competition in commercial enterprise becomes less and less due to the long devotion of their attention to military matters.

It is the exceptional person who can survive in commercial enterprise after long military service. Consequently, when one becomes a cadet or midshipman he sacrifices his opportunity of devoting himself to some other vocation and to plan his education so as to equip himself properly for his chosen field. In the concept of the economist he pays the opportunity costs which inevitably result from choice.

A third reason which appears to have influenced Congress in disallowing credit for service as a cadet or midshipman was the thought that the crediting of such service resulted in an undue advantage of those who have rendered it, as compared to those who are commissioned as officers directly from civil life without previous military experience.

While it is true that those who may credit such service do enjoy certain advantages in pay and retirement privileges; it will be shown in the next section of this statement that similar advantages have been allowed by Congress to those who have rendered certain other types of military service, active and inactive.

As far as earlier retirement is concerned, it would be noted that this applies only to the privilege of voluntary retirement. The granting of which, except for voluntary retirement after 40 years of service, is entirely discretionary.

Under normal circumstances the privilege of voluntary retirement is seldom resorted to by those who have rendered less than 30 years of service and, as far as enforced retirement is concerned, all officers are subject to the same requirements.

IV

That, on the basis of comparison with other full-time active military service and, even more important, in comparison with inactive service in the Reserve components of the armed services, credit for

which Congress has been fit to extend by law: Congress should now authorize credit for service as a cadet, midshipman and aviation cadet for pay, longevity, and retirement purposes.

Under present law military service of every kind on active duty in the regular services and the Reserve components, except service as a cadet, midshipman, or aviation cadet, is credited for pay purposes and, under certain circumstances, for retirement purposes.

In addition, all service in the Reserve components, while on inactive duty, is credited for pay purposes, and under certain circumstances, for retirement purposes as well.

Under section 3A of the Pay Readjustment Act of 1942, in addition to the time otherwise required to be credited with full time for pay purposes, those paid under the act are credited with full time for pay purposes for all periods during which they are enlisted or held commissions as officers or held appointments as warrant officers or Army field clerks or as commissioned warrant officers in the following:

1. Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service.
2. Regular Army Reserve.
3. Medical Reserve Corps of the Navy.
4. Dental Reserve Corps of the Navy.
5. Organized Militia prior to July 1, 1916.
6. National Guard.
7. National Guard Reserve.
8. National Guard of the United States.
9. Enlisted Reserve Corps.
10. Naval Militia.
11. National Naval Volunteers.
12. Naval Reserve Force.
13. Naval Reserve.
14. Marine Corps Reserve Force.
15. Marine Corps Reserve.
16. Coast Guard Reserve.
17. Reserve Corps of the Public Health Service.
18. Philippine Scouts.
19. Philippine Constabulary.
20. Coast and Geodetic Survey as authorized by section 2 (b) of the act of January 19, 1942 (56 Stat. 6).

Of these 20 classifications, the first and the last 3 listed are services on a full-time active-duty basis. The first includes all active duty in the regular services, Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service, except service as a cadet, midshipman, and aviation cadet.

The last three include service in the Philippine Scouts, Philippine Constabulary, and the Coast and Geodetic Survey as it existed under the act of January 19, 1942 (56 Stat. 6).

It appears that, from the standpoint of its value to the Government, the active military service of cadets, midshipmen, and aviation cadets should be counted in the same manner as the active military service of commissioned officers, warrant officers, Army field clerks, commissioned warrant officers, and enlisted men. All involve full-time active duty in the military establishments of the United States.

The remaining 16 services for which credit is given by section 3A, of the Pay Readjustment Act of 1942 include Reserve, National

Guard, and other comparable classifications of services. Most of these services entail comparatively little actual active duty, except in time of war. Nevertheless these services are accorded full credit for pay purposes.

Contrast this with the fact that, although they entail service on a full-time basis under the regular military establishments of the Federal Government, no credit is extended to service as a cadet, midshipman, or aviation cadet.

Under the provisions of section 7 (a) of the act of February 2, 1946 (Public Law 305, 79th Cong.), a Reserve officer who is retired under section 6 of the act receives retired pay at 2½ percent of his active duty pay, not only for the active duty performed but also for Reserve inactive service up to 10 years, so as not to exceed 30 years total service, or 75 percent of his active duty pay.

Under these provisions a Reserve officer with only 20 years of active service and with 10 additional years of Reserve inactive service is retired with 75 percent of his active-duty pay. Many Regular officers with upward of 28 years of active commissioned service, plus 3 or 4 years of active service as a cadet or midshipman, including active service in both World Wars, do not receive 75 percent of their pay.

Section 5 of the act of December 28, 1945 (Public Law 281, 79th Cong.), authorizes the crediting of constructive service equal to the number of days, months, and years by which the age of a Reserve officer to be commissioned in the Regular Army exceeds 25.

This same principle is being extended to the commissioning of officers into the Regular Navy. Thus constructive service is credited where no service has in fact been performed, whereas active service as a cadet, midshipman, or aviation cadet is not credited.

The Retired Officers Association recommends the enactment of appropriate legislation to authorize credit for service as a cadet, midshipman, or aviation cadet for pay, longevity, and retirement purposes.

Under present laws the following types of services are credited as indicated; whereas service as a cadet, midshipman, or aviation cadet, although such service in on a full-time basis, is not counted:

(1) All active service, Regular and Reserve, except service as a cadet, midshipman, or aviation cadet, is now credited for pay purposes and under certain circumstances for retirement purposes.

(2) Sixteen classifications of military service, other than service on active duty, is now credited for pay purposes under the provisions of section 3A of the Pay Readjustment Act of 1942.

(3) Reserve service, when coupled with sufficient active service, is now credited for retirement purposes.

(4) Constructive service is allowed to Reserve officers who are commissioned in the Regular services.

In order to remove the present manifest discriminations, to improve the morale of those who render and have rendered service as cadets, midshipmen, and aviation cadets, to make more attractive the military services to the young men of the high type necessary for the maintenance of their efficiency and, in view of the present-day concepts with regard to the acceptable standards for the crediting of military service for pay, longevity, and retirement purposes, the Retired Officers Association strongly recommends that Congress enact appropriate legislation to credit such service.

Thank you very much, sir.

Senator MORSE. Just one or two questions.

Do you have any questions, Senator Kilgore?

Senator KILGORE. No questions.

Senator MORSE. Have you gone into the ROTC and Navy college training at all?

Captain WILLENBUCHER. Not in this statement, but I have heard the testimony in which it was suggested that they be included, those who are in the ROTC, and we would certainly favor that, Mr. Chairman.

Senator MORSE. And I am to understand that with that exception you would be willing to go along with the proposed substitute bill?

Captain WILLENBUCHER. Yes, sir.

Senator MORSE. I want to thank you gentlemen very much.

I do not think there are any other witnesses, and with Senator Kilgore's approval, I suggest to Colonel Chambers that he proceed to prepare for us a tentative report in support of the substitute bill leaving open the question of the ROTC for full committee consideration.

Senator KILGORE. I want to think it over just a little bit, Mr. Chairman.

Senator MORSE. The whole thing is in that state.

Senator KILGORE. I think we must study this retirement situation because we have changed it from time to time so drastically.

The present Retired Officers Association is made up of officers either who have disability or who have passed the age of 60 and who are retired. Now we are getting to the point where we will be retiring perfectly able-bodied officers at ages 35 and 40.

Senator MORSE. My suggestion is that Colonel Chambers prepare a report for the consideration of our committee on the basis of the substitute bill.

Senator KILGORE. Have we ever had any estimates of costs?

Colonel CHAMBERS. Two million forty-four thousand dollars annually. It is in that report that you have there.

We have cut out the retirement features of this.

Senator KILGORE. Even if we cut it out, cut out the question of applying on retirement time for retirement pay. What I am getting at is this: I am not getting at the age of retirement but here you have a man who is capable of retiring at the age of 41 on 50 percent pay.

Colonel CHAMBERS. Correct.

Senator KILGORE. No; 60 percent pay, and he is right in his prime to go into industry and this awful criticism that we have had has been in regard to that thing.

Those are things that we will have to meet on the floor.

Senator MORSE. It is that type of problem that I think he has to cover in that memorandum.

Senator KILGORE. Our retirement system grew up in the days when we held on to the officer until he was 60 to 64 years of age.

Senator MORSE. Is it your suggestion then that we first have a meeting of the subcommittee?

Senator KILGORE. I think we ought to have a meeting first of the subcommittee.

Senator MORSE. The subcommittee will stand recessed subject to a further executive session.

(Thereupon, at 12:10 p. m., the subcommittee recessed subject to the call of a further executive session.)

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